United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL
WITH PROOF
OF SERVICE

75-7423

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

B
P/S

MARY ANNE GUITAR,

Plaintiff-Appellant,

-against-

WESTINGHOUSE ELECTRIC CORPORATION, WESTINGHOUSE BROADCASTING CO., INC. (DEL.), H. PAUL JEFFERS, ROBERT MARTIN CORPORATION, ROBERT WEINBERG, MARTIN BERGER, JOHN YOTTES, MARGARET MIGLIORE SCHNEIDER and GERALD DAVID LLOYD,

Defendants-Appellees.

ON APPEAL FROM AN ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

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UNITED STATES COURT OF APPEALS
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RELEVANT DOCKET ENTRIES

Relevant Docket Entries

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

MARY ANNE GUITAR,

Plaintiff,

against

WESTINGHOUSE ELECTRIC CORPORATION, WESTINGHOUSE BROADCASTING CO., INC. (DEL.), H. PAUL JEFFERS, ROBERT MARTIN CORPORATION, ROBERT WEINBERG, MARTIN BERGER, JOHN YOTTES, MARGARET MIGLIORE SCHNEIDER and GERALD DAVID LLOYD,

Defendants.

RELEVANT DOCKET ENTRIES IN PROCEEDING 73 CIV 161

DATE	PROCEEDINGS
Jan. 9-73	Filed complaint and issued summons.
Feb. 15-73	Filed AMENDED COMPLAINT.
Mar. 23-73	Filed ANSWER of defts. Robert Martin Corp., Robert Weinberg and Martin Berger to complaint, and demand for Interrogatories.
Apr. 3-73	Filed Deft. John Yottes ANSWER to COMPLAINT.
Apr. 4-73	Filed Certain Defts' ANSWER to AMENDED COMPLAINT.
Apr. 23-73	Filed Pltffs Answers to Interrogs.

RELEVANT DOCKET ENTRIES

Jun. 15-73	Filed ORDER. Ordered that deft. Westinghouse Broadcasting Co. is dropped from action and complaint is dismissed without costs; ordered that first sentence of para 3 of amended complaint amended to read as follows: "On information and belief deft Westinghouse Broadcasting Co. Inc. (Del.) herein "Broadcasting") is a corp. organized and existing under laws of State of Delaware, and is owner of Radio Stations WINS in New York City."; ordered that Westinghouse Broadcasting Co. Inc. (Del) hereby is joined as party deft; ordered that caption of action is amended to read as follows: MARY ANNE GUITAR, Pltff. vs. WESTINGHOUSE ELECTRIC CORPORATION WESTINGHOUSE BROADCASTING CO. INC. (DEL.) H. PAUL JEFFERS, ROBERT MARTIN CORPORATION, ROBERT WEINBERG, MARTIN BERGER, JOHN YOTTES, Defts. Carter, J.
Jun. 15-72*	Filed 2nd Amended Complaint., of Pltff.
Jul. 5-73	Filed ANSWER of defts. Westinghouse Electric & Westinghouse Broadcasting to the 2nd amended complaint.
Sep. 24-74	Filed Notice of Motion for Defts. Electric Broadcasting and Jeffers returnable 10/4/74 at 10AM, dismissing second amended complaint, as to deft. Westinghouse Electric Corp., Westinghouse Broadcasting and Paul Jeffers.
Sep-30-74	Filed deft. Robert Martin Corp., Robert Weinberg and Martin Berger's affdvt. and notice of cross-motion for summary judgment. (statement under Rule 9(g) also attached) - ret. 10-4-74.
Oct- 4-74	Filed affdvt. and cross notice of motion by defts' Schneider & Lloyd for dismissal of action by summary judgment.

* Date incorrect. Correct date June 15-73.

RELEVANT DOCKET ENTRIES

Nov-12-74	Filed plaintiff's affirmation of Robert P. Knapp, Jr.
06-18-75	Filed deft. Yottes affdvt. and notice of motion joining in for dismissal of action by summary judgment. ret. on Oct. 25, 1974. 10:00 a.m.
06-19-75	Filed OPINION #42627.. (all defendants moved for summary judgment) Defendants are granted summary judgment dismissing the second amended complaint, with costs and disbursements of this action. So ordered. -- Carter, J. m/n
06-30-75	Filed Judgment and order that defendants have judgment against the plaintiff dismissing the complaint, with costs to be taxed. - Clerk.
07-15-75	Filed pltf's notice of appeal to the USCA for the 2nd Circuit from order granting summary judgment to defendants and dismissing action - copies mailed to Townley Updike Carter & Rodgers, Esqs.; Nicholas A. D'Onofrio; F. V. Mina, Esq. and Cerchiara & Cerchiara, Esqs.

RELEVANT DOCKET ENTRIES IN 73 CIV 5287
(CONSOLIDATED FOR ALL PURPOSES WITH 73 CIV 161)

Dec.12-73	Filed Complaint and issued summons.
Jan-18-74	Filed ANSWER of deft. Margaret Schneider to complaint (hrein [sic] sued as Margaret Migliore)
Apr-16-74	Filed memo endorsed on deft's motion to dismiss: The motion to dismiss is denied. <u>This action is consolidated with 73 CIV 161 for all purposes</u>. While plaintiff is not to be denied the right to take the depositions of defendants Margaret Migliore and Gerald Davis [sic] Lloyd, the depositions are limited solely to the new matter not touched upon in the prior deposition and to matter relating solely to the issue of conspiratorial conduct alleged in this case. So ordered -- Carter, J. m/n

RELEVANT DOCKET ENTRIES

06-19-75	Filed Opinion #42627 granting summary judgment tc defendants dismissing the second amended complaint. - So ordered, Carter, J. m/n
06-30-75	Filed Judgment and order that the defendants have judgment against the pltf. dismissing the complaint with costs to be taxed. - Clerk (filed in 73-161).

SECOND AMENDED COMPLAINT IN 73 CIV. 161

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARY ANNE GUITAR,	:	
Plaintiff,	:	SECOND AMENDED COMPLAINT
-against-	:	
WESTINGHOUSE ELECTRIC CORPORATION, WESTINGHOUSE BROADCASTING CO., INC. (DEL.), H. PAUL JEFFERS, ROBERT MARTIN CORPORATION, ROBERT WEINBERG, MARTIN BERGER, JOHN YOTTES,	:	73 Civ. 161 RLC
Defendants.	:	

Plaintiff, Mary Anne Guitar, for her verified complaint herein alleges:

1. Plaintiff is a free-lance writer, residing at Old Redding Road, Redding, Connecticut.

2. On information and belief defendant Westinghouse Electric Corporation (herein "Westinghouse Electric") is a corporation organized and existing under the laws of the State of Pennsylvania.

3. On information and belief defendant Westinghouse Broadcasting Co., Inc. (Del.) (herein "Broadcasting") is a corporation organized and existing under the laws of the State of Delaware, and is the owner of Radio Station WINS in New York City. Further on information and belief, Broadcasting is wholly owned, controlled and dominated by Westinghouse Electric, is a component

of the Broadcasting, Learning and Leisure Time division of Westinghouse Electric and in all of the matters hereinafter alleged acted for and on behalf of Westinghouse Electric.

4. Defendant Jeffers resides at 444 East 75th Street, New York City and is employed by defendant Broadcasting as a radio announcer at WINS.

5. Defendant Robert Martin Corporation (herein "Martin") is on information and belief a New York corporation having its office at 101 Executive Boulevard, Elmsford, New York.

6. Defendant Robert Weinberg on information and belief resides at Sutton Place, New York City, and in concert with defendant Martin Berger controls defendant Martin.

7. Defendant Martin Berger on information and belief resides at 27 Hawthorne Way, Hartsdale, New York.

8. Defendant John Yottes, on information and belief, resides at 336 Central Avenue, Scarsdale, New York

9. On information and belief, defendant Yottes is and at all times herein mentioned was an agent and employee of defendant Broadcasting.

10. On information and belief, defendant Yottes is and at all times herein mentioned was in the employ of and an agent for defendants Martin, Weinberg and Berger in the capacity of public relations man.

11. Plaintiff is a citizen of the State of Connecticut,

and on information and belief, each of the defendants is a citizen of a state other than Connecticut.

12. The plaintiff is now and has been for over twenty-five years a member of the Democratic Party and a member of the "liberal" wing of that party. She has at all such times been opposed to racial discrimination, and in favor of public housing for low income families, in favor of conservation of natural resources and their development for the use and benefit of all the people, regardless of their income or economic status.

13. In her occupation as a free-lance writer, the plaintiff has for more than five years devoted her writing to matters concerning conservation and the environment, expressing the viewpoints set forth above, for which she has become well and widely known.

14. This court has jurisdiction of this case under title 28 United States Code §§ 1331 and 1332 in that the matter in controversy herein exceeds the sum or value of $10,000, exclusive of interest and costs, arises under the laws of the United States, to wit, title 47 United States Code, sub-chapter III and is between citizens of different states.

FIRST CAUSE OF ACTION, AGAINST DEPENDANTS MARTIN, WEINBERG, BERGER AND YOTTES

15. Said defendants are engaged in a venture to develop and build upon a certain tract of land in the Town of Greenburgh, Westchester County, New York.

16. On Sunday, December 17, 1972 defendant Broadcasting through its station WINS broadcast a purported review, allegedly by defendant Jeffers, of a book written by plaintiff, entitled Property Power How To Keep The Bulldozer, The Power Line And The Highwaymen Away From Your Door, (herein called the "book") a copy of which broadcast, purported review is annexed hereto, and made a party hereof as Exhibit A.

17. The plaintiff's book had been published in June 1972, six months before said broadcast, but in the week prior to December 17, 1972 it had been cited and quoted by opponents of the venture undertaken by the said defendants as evidence why such venture was undesirable.

18. In the broadcast of the purported book review the defendant Jeffers, willfully, deliberately and intentionally distorted the title of the book for the purpose of misrepresenting its true nature, character and content to the detriment of the plaintiff, her reputation, occupation and livelihood by referring to it solely as "Property Power" thereby omitting the full and complete title.

19. Further in the said purported review the defendant Jeffers made the following statements relating to the plaintiff's book:

> "Her book is Property Power. It amounts to a handbook on how to keep others out. * * * The battle cry seems to be "keep the others out." People become secondary to trees and space . . .

> especially if the people are newcomers.. Property Power renounces progress even if it means decent livable homes for people. Property Power says the rose covered cottage in the country is okay for those who got there first but must be off-limits to those who now would like to breathe some of that fresh air. * * * What bothers me about Property Power is the seeming hypocrisy of it. On one hand the author writes, "most of us simply want to live on the land." Then she proceeds to write a book telling how to keep "most of us" from doing so."

20. The foregoing statements and the purported "review" as a whole are false, untrue and without foundation in or relation to any statements appearing in the plaintiff's book.

21. On or about December 20, 1972, said defendants distributed or caused to be distributed publicly what they alleged to be a printed reproduction of the aforesaid broadcast of December 17, 1972 by the defendant Jeffers, a copy of which printed reproduction is annexed hereto and made a part hereof as Exhibit B.

22. The said printed reproduction contained the same false and defamatory statements hereinabove alleged and set forth.

23. Appended to this same alleged printed reproduction and made a part of it under the heading "Ms. Guitar quotes:" were four sentences as follows:

[a] "My role is to make you feel less guilty about wanting to preserve your wooded boundaries and keep all newcomers out at all costs."

[b] "City people should be made to stay in the city."

[c] "The City should not be robbed of its livelihood by enticing industry to the suburbs."

[d] "I would be happy to throw sand in the wheels of progress."

24. By the use of the aforesaid heading "Ms. Guitar quotes:" the said defendants intended to imply, impute and create the false and untrue impression that sentences [a] through [d] were quotations of actual remarks and statements by plaintiff whereas in truth and in fact, they had been willfully, maliciously and wrongfully concocted, fabricated, manufactured and invented by the said defendants for the purpose of misrepresenting and distorting the plaintiff and the content of her book.

25. In truth and in fact, the plaintiff has at no time ever made any remarks, allegations or statements expressly or in intent as attributed to the plaintiff by the said defendants as aforesaid, nor has the plaintiff ever made any averment of statements in the sense or effect of the sentences labeled [a], [b], or [d] above, and the attribution of such quotations and the thoughts expressed in them to the plaintiff is false and untrue, but contrary to the apparent belief of the said defendants, plaintiff does believe and publicly and actively advocates that the city should not be destroyed and deprived of their revenues and livelihoods through the enticement of industry to the suburbs by special subsidies, concessions and inducements.

26. The publication and distribution of the alleged printed reproduction of the review of plaintiff's book by the said defendants were deliberate, willful, intentional and malicious and were done by the said defendants with the purpose and intent, not of informing the public of the true content of plaintiff's book, of plaintiff's true views nor of imparting true and bona fide comment and criticism of the book, but wholly and entirely with the purpose and intent of maliciously discrediting and defaming the plaintiff, injuring her in her occupation and livelihood and holding her up to public shame, contempt, contumely and ridicule for the sole and entire purpose of advancing the pecuniary and financial interests of the said defendants in their desire to develop and build upon a certain tract of land in the town of Greenburgh, Westchester County, New York; and the said publication did so injure plaintiff.

27. By reason of the foregoing plaintiff has been damaged in the amount of one million dollars.

SECOND CAUSE OF ACTION, AGAINST DEFENDANTS WESTINGHOUSE ELECTRIC, BROADCASTING, JEFFERS AND YOTTES

28. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 20 hereof.

29. The plaintiff's book was published in June of 1972, and it is not the custom and practice to review a book for a general audience six months after publication as the defendant

Jeffers did, unless the book has otherwise been placed before the public at such a time, which was not the case with the plaintiff's book.

30. The defendant Westinghouse Electric has on information and belief investments in land that it is engaged in developing.

31. As a pretext for the broadcast of his purported review, the defendant Jeffers made reference to an article in the New York Times on the preceding day relating primarily to land development problems in northern New England saying:

> "This suburban resistance is the subject of a book by Mary Anne Guitar who is neither a city planner nor an architect, but rather a writer about homes and conservation."

32. "Suburban resistance" was neither a subject of the New York Times' article nor of the plaintiff's book, nor has plaintiff in her book or otherwise ever advocated "suburban resistance."

33. The purported "review" was made and publicly broadcast by the defendant Jeffers and Broadcasting through and with the planning, programming and connivance by Jeffers with defendant Yottes and other employees, editors, technicians and announcers of the defendant Broadcasting, unknown by name to the plaintiff, for and on behalf of the defendant Broadcasting and at its instance and behest.

34. The purported "review" by defendant Jeffers was made willfully, deliberately and maliciously, not for the purpose of reviewing the plaintiff's book, but for the purpose of defaming and discrediting the plaintiff personally, injuring her in her occupation and livelihood, and holding her up to shame, contempt, contumely and ridicule, and the publication of the "review" did so injure and damage plaintiff.

35. By reason of all of the foregoing in this second cause of action alleged, the plaintiff has been damaged in the amount of one million dollars.

THIRD CAUSE OF ACTION, AGAINST ALL OF THE DEFENDANTS

36. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 26 and 29 through 34 hereof.

37. On information and belief the radio broadcast and publication of the purported book review by the defendant Jeffers on Sunday, December 17, 1972 and its publication and distribution by the defendants Martin, Weinberg, Berger and Yottes on Wednesday, December 20, 1972 in printed form as a part and component of a larger and more extensive printed publication by the latter three defendants was not a happenstance or coincidence, but was the result of conspiracy, collusion and connivance between and among the four individual defendants with the com-

plicity, assistance, participation and consent of the corporate defendants for the purpose of maliciously discrediting, defaming and injuring the plaintiff in her reputation and livelihood by holding her up and exposing her to shame, contempt, contumely and ridicule for the purpose of advancing and promoting pecuniary and financial self-interest of the individual defendants and the defendant Martin for their joint and several gain and profit; and by reason of said acts plaintiff was so injured.

38. The acts and publications in this third cause of action alleged constitutes a conspiracy to violate and violations of title 47 United States Code §§ 317, 501, 502, 503 and 508.

39. By reason of all of the foregoing the plaintiff has been injured in the amount of two million dollars.

WHEREFORE, plaintiff demands judgment against the defendants in the amount of two million dollars compensatory damages and three million dollars punitive damages together with the costs and expenses of this action.

Plaintiff demands trial by jury.

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Attorneys for Plaintiff
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New York, New York 10005
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By s/s Robert P. Knapp, Jr.
A Partner

EXHIBIT A TO SECOND AMENDED COMPLAINT - TRANSCRIPTION OF JEFFERS' BROADCAST OVER WINS ON DECEMBER 17, 1972

"The hope of a lot of city dwellers is to find a place in the suburbs or the country with trees and green grass and clean air. Indeed, that 'better life' has long been part of the so-called American dream. But, as you may have noticed, some suburbanites are not too eager to have city folk moving in. An article in yesterday's Times describes resistance in New England to new home building. This suburban resistance is the subject of a book by Mary Anne Guitar, who is neither a city planner nor an architect, but rather a writer about homes and conservation. Her book is PROPERTY POWER. It amounts to a handbook on how to keep others out. Not just the businesses which have been looking to relocate in the suburbs, but also people. Mary Anne Guitar recommends an amazing arsenal of weapons to keep the suburbs pure -- law suits, the ballot box, tax-payer petitions, and many, many other devices. The battle cry seems to be 'keep the others out.' People become secondary to trees and space... especially if the people are new comers. PROPERTY POWER denounces progress even if it means decent, livable homes for people. PROPERTY POWER says the rose covered cottage in the country is okay for those who got there first but must be off-limits to those who now would like to breathe some of that fresh country air. The author of PROPERTY POWER lives in Redding, Connecticut and has

EXHIBIT A TO SECOND AMENDED COMPLAINT - TRANSCRIPTION OF JEFFERS' BROADCAST OVER WINS ON DECEMBER 17, 1972

been busy there keeping HER piece of New England 'clean and green', as it says in her author's biography. Yet Mary Anne Guitar is not a native New Englander. She was born in Missouri. One wonders where she would be living now if someone in Redding had decided to invoke property power in the 1950's when Miss Guitar wanted to move into town. What bothers me about PROPERTY POWER is the seeming hypocrisy of it. On one hand the author writes, 'most of us simply want to live on the land.' Then she proceeds to write a book telling how to keep 'most of us' from doing so. Published by Doubleday at $6.95, Mary Anne Guitar's PROPERTY POWER is a blueprint for exclusion... and, if followed, I'm afraid it's a blueprint for stagnation in the suburbs. I'm H. Paul Jeffers."

EXHIBIT B TO SECOND AMENDED COMPLAINT - LEAFLET DISTRIBUTED BY ROBERT MARTIN CORPORATION AT ZONING HEARING ON DECEMBER 20, 1972

PROPERTY POWER by Mary Anne Guitar

In its opposition to the Tarrygreen Proposal, the Save Irvington Committee has called upon Mary Ann Guitar of Redding, Connecticut, author of "Property Power", for advice and guidance. WINS Book Critic, H. Paul Jeffers, recently reviewed Ms. Guitar's book. His comments should be of interest to all thoughtful residents of Greenburgh.

Review by H. Paul Jeffers, WINS, of "Property Power" by M.A. Guitar
Broadcast, Sunday, December 17, 1972.

"The hope of a lot of city dwellers is to find a place in the suburbs or the country with trees and green grass and clean air. Indeed, that "bet[illegible]fe" has long been part of the so-called American dream. But, as you may have noticed, some suburbanites are not too eager to have city folk moving in. An article in yesterday's Times describes resistance in New England to new home building. This suburban resistance is the subject of a book by Mary Anne Guitar, who is neither a city planner nor an architect, but rather a writer about homes and conservation. Her book is PROPERTY POWER. It amounts to a handbook on how to keep others out. Not just the businesses which have been looking to relocate in the suburbs, but also people. Mary Anne Guitar recommends an amazing arsenal of weapons to keep the suburbs pure — law suits, the ballot box, tax-payer petitions, and many, many other devices. The battle cry seems to be "keep the others out." People become secondary to trees and space ... especially if the people are newcomers. PROPERTY POWER denounces progress even if it means decent, livable homes for people. PROPERTY POWER says the rose covered cottage in the country is okay for those who got there first but must be off-limits to those who now would like to breathe some of that fresh air. The author of PROPERTY POWER lives in Redding, Connecticut and has been busy there keeping HER piece of New England "clean and green", as it says in her author's biography. Yet Mary Anne Guitar is not a native New Englander. She was born in Missouri. One wonders where she would be living now if someone in Redding had decided to invoke property power in the 1950's when Miss Guitar wanted to move into town. What bothers me about PROPERTY POWER is the hypocrisy of it. On one hand the author writes, "most of us

EXHIBIT B TO SECOND AMENDED COMPLAINT - LEAFLET DISTRIBUTED BY ROBERT MARTIN CORPORATION AT ZONING HEARING ON DECEMBER 20, 1972

simply want to live on the land." Then she proceeds to write a book telling how to keep "most of us" from doing so. Published by Doubleday at $6.95, Mary Anne Guitar's PROPERTY POWER is a blueprint for exclusion ... and, if followed, a blueprint for stagnation in the suburbs. I'm H. Paul Jeffers."

Ms. Guitar quotes:

"My role is to make you feel less guilty about wanting to preserve your wooded boundaries and keep all newcomers out at all costs"

"City people should be made to stay in the city"

"The City should not be robbed of its livelihood by enticing industry to the suburbs"

"I would be happy to throw sand in the wheels of progress".

ANSWER OF DEFENDANTS ROBERT MARTIN CORPORATION, BERGER AND WEINBERG

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

(SAME TITLE)

----------x

The defendants, ROBERT MARTIN CORPORATION, ROBERT WEINBERG and MARTIN BERGER, above named, by their attorney NICHOLAS A. D'ONOFRIO; answering the complaint of the plaintiff herein; upon information and belief:

FIRST: Denies any knowledge or information thereof sufficient to form a belief as to the allegations contained in the paragraphs designated: 1, 2, 3, 4, 8, 9, 11, 12, 13, 14, 16, 17, 19, 20, 30, 31, 32, 33, 34.

SECOND: Denies each and every allegation contained in the paragraphs designated: 6 and 24, and the defendants leave all further questions of law for the court.

THIRD: Admits each and every allegation contained in the paragraph designated: 5 and 7.

FOURTH: Denies each and every allegation contained in the paragraphs designated: 10, 22, 25, 26, 27, 35, 37, 38, 39.

FIFTH: Denies any knowledge or information thereof sufficient to form a belief as to the allegations contained in

the paragraphs designated: 18, 29, and the defendants leave all further questions of law for the court.

SIXTH: Denies each and every allegation contained in the paragraph designated: 23, and let the circular speak for itself.

SEVENTH: Denies each and every allegation contained in the paragraph designated: 15, except admits Robert Martin Corporation is engaged in a venture to develop a certain tract of land in the Town of Greenburgh, Westchester County, New York.

EIGHTH: Denies any knowledge or information thereof sufficient to form a belief as to the allegations contained in the paragraphs designated: 21, except admits On or about December 20, 1972, Robert Martin Corporation distributed a Fact Sheet at a Planning Board Hearing.

NINTH: Repeats above denials for paragraphs designated: 28 and 36.

AS AND FOR A FIRST COMPLETE AFFIRMATIVE DEFENSE TO ALL CAUSES OF ACTION: That the contents and implications of Exhibits designated A and B were true and were published without malice.

AS AND FOR A SECOND AND SEPARATE AND PARTIAL AFFIRMATIVE DEFENSE TO ALL CAUSES OF ACTION: That the contents and implications of Exhibits designated A & B were true and published without malice.

ANSWER OF DEFENDANTS ROBERT MARTIN CORPORATION, BERGER AND WEINBERG

AS AND FOR A THIRD SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE TO ALL CAUSES OF ACTION:

That the allegations of the facts contained in said exhibits are true in substance and fact. That the expressions of opinion contained therein are fair comments, made in good faith, without malice, upon said facts which are matters of public concern.

AS AND FOR A FOURTH AND SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE TO ALL CAUSES OF ACTION: AND AS FOR A FIFTH AFFIRMATIVE DEFENSE TO ALL CAUSES OF ACTION:

That the allegations of the facts contained in said exhibits are true in substance and fact. That the expressions of opinion contained therein are fair comments, made in good faith, without malice, upon said facts which are matters of public concern.

AS AND FOR A FIFTH SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE:

That the exhibits were published by defendants in belief that the facts therein set forth were true.

AS AND FOR A SIXTH SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE TO ALL CAUSES OF ACTION:

That such publications were privileged under the First Amendment of the Constitution of the United States or under Article 1, Section 8, of the State of New York.

AS AND FOR A SEVENTH SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE TO ALL CAUSES OF ACTION:

That the plaintiff's complaint fails to state a cause of action.

ANSWER OF DEFENDANTS ROBERT MARTIN CORPORATION, BERGER AND WEINBERG

AS AND FOR AN EIGHTH SEPARATE AND PARTIAL AFFIRMATIVE DEFENSE TO ALL CAUSES OF ACTION:

That the plaintiff's complaint fails to state a cause of action.

AS AND FOR A NINTH SEPARATE AND PARTIAL AFFIRMATIVE DEFENSE TO ALL CAUSES OF ACTION:

That the defendant at no time intended to defame the plaintiff.

* * *

Dated: New York City - March 22, 1973

Yours, etc.,

NICHOLAS A. D'ONOFRIO
Attorney for Defendants
ROBERT WEINBERG, ROBERT MARTIN CORPORATION and MARTIN BERGER

BY: _____
A Member of the Firm
123 William Street
New York, New York 10038
WOrth 4-2700

TO: WINDELS, MERRITT & INGRAHAM
Attorneys for Plaintiff
40 Wall Street
New York, New York 10005

ANSWER OF DEFENDANT YOTTES

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

(SAME TITLE)

----------x

The defendant, JOHN YOTTES, above named, by his attorneys, CERCHIARA & CERCHIARA, answering the complaint of the plaintiff herein; upon information and belief:

FIRST: Denies any knowledge or information thereof sufficient to form a belief as to the allegations contained in the paragraphs designated: 1, 2, 3, 4, 5, 6, 7, 11, 12, 13, 14, 16, 17, 19, 20, 21, 30, 31, 32, 34.

SECOND: Denies each and every allegation contained in the paragraph designated: 24, and the defendantleaves all further questions of law for the court.

THIRD: Admits each and every allegation contained in the paragraph designated: 8.

FOURTH: Denies each and every allegation contained in the paragraphs designated: 9, 10, 15, 22, 25, 26, 27, 33, 35, 37, 38, 39.

FIFTH: Denies any knowledge or information thereof sufficient to form a belief as to the allegations contained in the paragraphs designated: 18, 29, and the defendant leaves all further

questions of law for the court.

SIXTH: Denies each and every allegation contained in the paragraph designated: 23, and let the circular speak for itself.

SEVENTH: Repeats above denials for paragraphs designated: 28 and 36.

AS AND FOR A FIRST COMPLETE AFFIRMATIVE DEFENSE TO ALL CAUSES OF ACTION:

That the contents and implications of Exhibits designated A and B were true and were published without malice.

AS AND FOR A SECOND AND SEPARATE AND PARTIAL AFFIRMATIVE DEFENSE TO ALL CAUSES OF ACTION:

That the contents and implications of Exhibits designated A & B were true and published without malice.

AS AND FOR A THIRD SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE TO ALL CAUSES OF ACTION:

That the allegations of the facts contained in said exhibits are true in substance and fact. That the expressions of opinion contained therein are fair comments, made in good faith, without malice, upon said facts which are matters of public concern.

AS AND FOR A FOURTH AND SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE TO ALL CAUSES OF ACTION: AND AS FOR A PARTIAL AFFIRMATIVE DEFENSE TO ALL CAUSES OF ACTION:

That the allegations of the facts contained in said

exhibits are true in substance and fact. That the expressions of opinion contained therein are fair comments, made in good faith, without malice, upon said facts which are matters of public concern.

AS AND FOR A FIFTH SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE:

That the exhibits were published by defendants in belief that the facts threin set forth were true.

AS AND FOR A SIXTH SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE TO ALL CAUSES OF ACTION:

That such publications were privileged under the First Amendment of the Constitution of the United States or under Article 1, Section 8, of the State of New York.

AS AND FOR A SEVENTH SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE TO ALL CAUSES OF ACTION:

That the plaintiffs complaint fails to state a cause of action.

AS AND FOR AN EIGHTH SEPARATE AND PARTIAL AFFIRMATIVE DEFENSE TO ALL CAUSES OF ACTION:

That the plaintiff's complaint fails to state a cause of action.

AS AND FOR A NINTH SEPARATE AND PARTIAL AFFIRMATIVE DEFENSE TO AL CAUSES OF ACTION:

That the defendant at no time intended to defame the plaintiff.

* * *

ANSWER OF DEFENDANT YOTTES

Dated: Mount Vernon, New York
March 30, 1973

Yours, etc.,

CERCHIARA & CERCHIARA
Attorneys for Defendant,
JOHN YOTTES

By: [signature]
A member of the Firm
145 Mount Vernon Avenue
Mt. Vernon, New York 10550
(914) 699 0100

TO:

WINDELS, MERRITT & INGRAHAM
Attorneys for Plaintiff
40 Wall Street
New York, New York 10005

DEPOSITION OF MARTIN BERGER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

(SAME TITLE)

----------x

40 Wall Street,
New York, New York

April 10, 1973,
10:50 o'clock a.m.

Deposition of Defendant ROBERT MARTIN CORPORATION, by MARTIN S. BERGER taken by Plaintiff pursuant to Notice.

ooo

Beekman Reporting Service
Certified Shorthand & Stenotype Reporters
150 Nassau Street
New York, N.Y. 10038
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DEPOSITION OF MARTIN BERGER

Appearances:

MESSRS. WINDELS, MERRITT & INGRAHAM,
Attorneys for Plaintiff,
40 Wall Street,
New York, New York
BY: ROBERT KNAPP, ESQ.,
DENNIS McGRATH, ESQ.,
Of Counsel.

MESSRS. TOWNLEY, UPDIKE, CARTER & ROGERS,
Attorneys for Defendants Westinghouse Electric Corp. and Westinghouse Broadcasting Co., Inc. and H. Paul Jeffers,
330 East 42nd Street,
New York, New York
BY: JOHN J. MACCHIA, ESQ.,
Of Counsel.

NICHOLAS A. D'ONOFRIO, ESQ.,
Attorney for Defendants Robert Weinberg, Robert Martin Corporation and Martin Berger,
123 William Street,
New York, New York

MESSRS. CERCHIARA & CERCHIARA,
Attorneys for Defendant Yottes,
145 Mt. Vernon Avenue,
Mt. Vernon, New York
BY: VINCENT F. CERCHIARA, ESQ.,
Of Counsel.

ooo

IT IS HEREBY STIPULATED AND AGREED, by and between the attorneys for the respective parties herein, that the sealing, filing and certification of the within Deposition be waived; that such Deposition may be signed and sworn to before any officer authorized to administer an oath, with the same force and effect as if signed and sworn to before a Judge of this Court.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to form, are reserved to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED that counsel for Plaintiff shall furnish a copy of the within Deposition to counsel for said witness, without charg

ooo

M A R T I N S. B E R G E R, being first duly sworn by a Notary Public of the State of New York, was examined and testified as follows:

EXAMINATION BY

MR. KNAPP:

Q Would you state your name and residence, please, Mr. Berger, for the record?

A Martin S. Berger, 27 Hawthorne Way, Hartsdale, New York.

Q What business are you engaged in, Mr. Berger?

A Real Estate Development.

Q Are you connected with the Robert Martin Corporation?

A Yes. I am President of the corporation.

MR. D'ONOFRIO: Just answer the questions. Don't add any information.

THE WITNESS: Okay.

Q Do you own any stock in that corporation?

A Yes.

Q What percentage of the stock of that corporation do you own?

MR. D'ONOFRIO: I am going to object to that question. I don't think that is proper examination.

Q Who are the other stockholders in the Robert Martin Corporation?

A Robert Weinberg.

Q Are there any other stockholders besides yourself and Mr. Weinberg?

A No.

Q Who are the officers of Robert Martin Corporation?

A Robert Weinberg, Martin Berger,

MR. D'ONOFRIO: Tell him what positions they hold.

A (Continuing) Weinberg is Chairman of the Board. I am President. And there are a number of Vice-Presidents who are non-stockholders.

MR. D'ONOFRIO: Their names?

A (Continuing) Lee Corton, John Trosie, Lee Zaubler, Gerald Lloyd, Leonard Luiso, and Muriel Broxmeyer.

Q Any other officers, such as Secretary, Treasurer?

A I believe that Broxmeyer is also Secretary.

Q There is no Treasurer?

A I don't think so.

Q Or other corporate officer?

A No.

Q Who is the Chief Executive Officer?

A I am.

Q Is Robert Martin Corporation engaged in a project to develop an area which it calls Tarrygreen?

A Yes, sir.

Q Where is that located?

A The Town of Greenburgh.

Q What is the status of that project at this time?

A At this time it is -- it was presented to the Planning Board of the Town of Greenburgh, and is under study.

Q Would it be correct to say it is under study for approval by the Planning Board?

A Or disapproval.

Q Does Robert Martin Corporation have any relationship with the Defendant Westinghouse Electric Corporation or any affiliate or subsidiary of Westinghouse Electric Corporation?

A Not to my knowledge, sir.

Q Does it do business with Westinghouse Electric Corporation or any subsidiary or affiliate?

A Not in any substantial way. We might have, over the years, way back, bought a few appliances from them, but

they are not the prime source of any materials.

Q Have you ever met the Plaintiff Mary Anne Guitar?

A Not personally, no.

Q Have you ever seen her?

A I seen her picture on the book.

Q Have you ever seen her in person?

A I couldn't say.

Q Have you ever met the defendant H. Paul Jeffers?

A No, sir.

Q Where does the defendant Robert Weinberg reside?

A In Manhattan.

Q Do you know the street address?

A Not offhand, sir. It is on 75th Street in Manhattan -- 35 East 75th Street.

Q Do you know the defendant John Yottes?

A Yes, sir.

Q How long have you known him?

A A number of years -- in excess of five.

Q Have you ever personally employed or engaged Mr. Yottes toperform any services for you?

MR. D'ONOFRIO: Off the record.

(Discussion off the record)

A Yes, we have.

MR. D'ONOFRIO: He is talking about you individually.

Have you employed him?

THE WITNESS: No, negative.

Q Has the corporation, Robert Martin Corporation, ever engaged Mr. Yottes to perform services for it?

A As a technicality, off the record, do you mean Yottes or his company? Is that the same question?

MR. D'ONOFRIO: Do you want to add that in there?

Q (Continuing) Yottes or his company, Talent, Unlimited, Inc.

A Yes, we have.

Q What have you employed them to do?

A To do public relations, consultation work.

Q What has that work consisted of?

A Mr. Yottes helped us prepare for a public hearing on the Tarrygreen Development.

Q Where was that public hearing held?

A The Town Hall, Greenburgh.

Q Before whom was it held?

A The Planning Board.

Q At what time of day?

A Evening.

Q Would that have been December 20, 1972?

A I am quite certain that is correct.

Q When was Mr. Yottes engaged to handle that work,

that public hearing?

A I am not certain of the date, but I would say the end of November, beginning of December.

MR. D'ONOFRIO: What year?

THE WITNESS: Of 1972.

Q Are you aware of a meeting that was held on or about December 13th in Irvington with regard to the Tarrygreen Development, in the Irvington High School?

A Yes, sir.

Q Did Mr. Yottes' services embrace any preparation or attendance at that meeting?

A I don't believe so. I don't recall.

Q Were you personally present at that meeting?

A No, sir.

Q Was anyone, to your knowledge, from Robert Martin Corporation present at that meeting?

A Yes, sir.

Q Who was present?

A Gerald Lloyd, Vice-President, and Margaret Migliora, my personal secretary, not corporate secretary.

Q Anyone else?

A Nobody else, to my knowledge.

Q What was the purpose for them being present?

A It was an open meeting.

Q They were there to observe what went on?

A That is correct.

Q Did they make a report to you on that meeting?

A Yes, sir.

Q What was that report?

A They took notes of many of the statements and comments which were made by various speakers at that meeting.

Q What were those statements and comments?

A They were from many, many speakers.

Q What was the content, the subject of those statements and comments?

A Essentially they were comments concerning procedures andpositions to be taken by people in opposition to our Tarrygreen Development at the December 20th meeting.

Q Was the plaintiff, Mary Anne Guitar, the subject of any of those statements or comments?

A Yes, sir.

Q What was said about her?

A She made statements at the meeting. I don't believe there were people who made comments about her.

Q Miss Guitar made statements at the meeting, at the Lexington High School on December 13th?

A Let me check some notes.

(Witness examines paper)

Yes, sir, that is correct. As per the reports I was given.

Q Do you have those reports with you?

A Yes, sir, I do.

MR. KNAPP: May we see those reports, please?

MR. D'ONOFRIO: Yes (handing).

Let the record show that the Defendant Robert Martin Corporation, by their attorney, is turning over to Mr. Knapp certain papers consisting of eleven pages entitled "Draft notes at meeting of Save Irvington Committee, Irvington High School, December 13, 1972," and which are on 8 x 11-1/2 plain paper, double spaced, typed.

MR. KNAPP: I ask that this be marked for identification as Plaintiff's Exhibit 1-M.

(Group of eleven pages, "Notes," etc., were marked as Plaintiff's Exhibit 1-M for identification, this date)

MR. D'ONOFRIO: Let the record also show that I am handing -- that the Defendant Robert Martin Corporation, through their attorney, is handing over to the Plaintiff's attorney, Mr. Knapp, three typewritten pages, again on 8-1/2 x 11, single spaced, entitled "Panel: Guitar, Finegan, Case, Walker, Schlerleimer, Puma."

MR. KNAPP: Thank you, sir.

MR. D'ONOFRIO: Off the record.

(Discussion off the record)

MR. KNAPP: I will ask that this be marked for identification also.

(Group of three papers, entitled "Panel," etc., were marked Plaintiff's Exhibit 2-M for identification, this date)

MR. MACCHIA: Off the record.

(Discussion off the record)

BY MR. KNAPP:

Q Mr. Berger, referring to Plaintiff's Exhibit 1M, which is labeled "Draft," who prepared that Exhibit?

A Mr. Gerald Lloyd had taken the notes at the hearing and his secretary typed them, I guess.

Q That was delivered to you, Exhibit 1M, when, Mr. Berger?

A Apparently it was typed on 12/18/72.

MR. D'ONOFRIO: The question was, when was it delivered to you?

A (Continuing) Soon after the meeting. I believe I got a verbal report and then this was typed.

Q You got a verbal report the next day after the meeting?

A What day of the week was the 13th? Do you know?

Q The 13th would have been Wednesday.

A Yes, I am quite certain I did, the next day.

Q This would have been Monday, the 18th. Do you recall when this was given to you?

A I know I got a verbal report from both Lloyd and Migliora, who prepared the other notes. And I would assume that the typed report came to me on the 18th.

Q On the 18th?

A I would assume so.

Q You don't recall for sure?

A No, I don't. The only thing that leads me to that is the date on the bottom of the last page.

Q We are referring there to Plaintiff's Exhibit 1M. Now, I am going to show you Plaintiff's Exhibit 2M.

Will you tell us, please, who prepared that Exhibit?

A I am not 100% certain, but I believe that Maragret Migliora took care of this one, and it would have probably been given to me the next day.

Q But you can't recall for sure?

A No. The probability is that it would be the next day. I was interested, and I am quite certain they reported to me the next morning, but I just don't recall.

MR. KNAPP: Off the record.

(Discussion off the record)

Q Between the time of the meeting of December 13th, 1972, and Sunday, December 17th, were you in contact with Mr. Yottes?

A Yes.

Q When did that occur?

A Over that weekend. He helped me set up the meeting.

I just want to get my dates straight. The Sunday after the 13th would have been what date?

Q The 17th.

A I believe it was Sunday, the 17th, we had a presentation meeting at the Holiday Inn in Elmsford.

Q When were the arrangements for that meeting on Sunday made?

A I would assume mid-week.

Q Did you make arrangements for it?

A Mr. Yottes and I and other members of my staff.

Q This was after the hearing, or the meeting, rather, in the High School on the 13th?

A I wouldn't be certain of that, sir. I wouldn't be certain.

Q Do you have any diaries or telephone records or any other data in which you keep records of this nature?

A I could possibly have some notations. My personal diary wouldn't have anything.

I know that we were busy that week preparing for the Sunday meeting.

And just when we started, and when we engaged the room at the Holiday Inn, that is something I just don't know.

Q Would you please examine your files and records and produce for us any records that you might have --

A As to when we set the date?

MR. D'ONOFRIO: Let him finish the question.

Q -- as to the making of arrangements for that Sunday meeting, and as to any conversation, by telephone or in person, that you may have had with Mr. Yottes in the period between December 13th and, let's say, in the period from December 13th through Saturday, December 16th, inclusive?

MR. D'ONOFRIO: Mr. Knapp, are we going to leave a space in this examination, and you are asking Mr. Berger to fill in the information if he has any of this information?

MR. KNAPP: Yes. I would like to see it, and, subject to whatever it is, I would like to examine on it if this is appropriate.

MR. D'ONOFRIO: If he has any notes or personal recollection of the details concerning the setting up of

this meeting, he will set it forth. There will be a space left in this examination for that.

THE WITNESS: Yes.

My notes indicate that arrangements were made on Thursday December 15th for the Holiday Inn Breakfast Meeting on December 17th

BY MR. KNAPP:

Q At what time of day on Sunday, December 17th, did you meet with Mr. Yottes?

MR. D'ONOFRIO: I don't want to object to the form of the question, but it does not necessarily follow this meeting was only with Mr. Yottes.

From what he has stated, it seems to be a meeting of more than just the two of them. And your question, the form of it, makes it look as if it was just a meeting between the two of them. That is my objection to the form of it.

MR. KNAPP: I didn't intend to confine it to Mr. Yottes.

BY MR. KNAPP:

Q At what time of day on Sunday, December 17th, did you meet with Mr. Yottes with or without others present?

A I had a meeting, or breakfast or brunch meeting,

at around 10:00 o'clock.

Q Were there others present?

A Yes.

Q Who were they?

A The people from the greater Greenburgh community who were invited.

Q What were their names, please?

A It is very difficult for me to recall all of them. One was Howard Grossman, William Brown, Sue Finn.

MR. CERCHIARA: I was there.

A (Continuing) Mr. Cerchiara, Florence Simon.

I remember their faces, but not the names. I would say there were about twenty-five people in there.

Q Those are the only ones you can think of?

A There were a number of people I didn't know personally. So it is kind of difficult.

Q Who was there from your organization, from the Robert Martin Corporation?

A Miss Migliora, myself, Robert Weinberg, Gerald Lloyd, were definitely there. And John Yottes was there.

I don't know if any other members of my organization were there.

Q During the course of that breakfast or brunch meeting, did Mr. Yottes bring up the name of the Plaintiff,

Mary Anne Guitar?

A I don't recall.

Q Do you recall any discussion of any sort involving the Plaintiff?

A I don't specifically recall, no.

Q Do you recall any mention of her book "Property Power. How To Keep The Bulldozers, The Power Lines and Highway Men Away From Your Door"?

A I am just not certain, sir.

Q Do you recall any discussion at that meeting of a radio broadcast of that morning?

A It is hard for me --

This can be off the record or on the record, I don't care.

MR. KNAPP: On the record.

MR. D'ONOFRIO: Yes, keep it on the record.

A (Continuing) It is difficult for me to recall the exact sequence of when her book, and reviews of it were discussed.

MR. D'ONOFRIO: He is talking about now at the meeting.

THE WITNESS: I understand.

MR. D'ONOFRIO: He is asking you, were they discussed at all at the meeting, to your knowledge.

A (Continuing) Her book was certainly not the subject of any meeting.

Our meeting was designed to present the merits of our plan to a number of community leaders. And, if there was discussion of her book, it was peripheral, it was not the theme of the meeting by any means.

Q But, with reference to this meeting on Sunday, December 17th, at the Holiday Inn, the breakfast or brunch, you can't now recall Mr. Yottes mentioning to you Miss Guitar?

A He mentioned Miss Guitar to me many times prior to that December 20th hearing.

Whether he definitely mentioned her to me that morning, I couldn't rightfully recall.

Q Or her book? You can't recall whether he mentioned her book?

A I had read her book well in advance of that meeting.

Q Had you read it before the meeting in the High School?

A Yes.

Q Did there come a time when -- and I refer to some time prior to the institution of this suit, when you were informed of a radio broadcast by Station WINS --

A Yes, sir.

Q -- relating to her book?

MR. D'ONOFRIO: Let him finish his question.

THE WITNESS: I am sorry.

MR. D'ONOFRIO: Let me hear the question.

(Whereupon the preceding question was read by the reporter)

MR. D'ONOFRIO: Now, answer it.

A (Continuing) Yes, sir.

Q When did that occur?

A I just find it difficult to recall exactly when it occurred. It certainly occurred prior to the public hearing of December 20th. Whether it was that Sunday or not, I don't know.

Q How long did that meeting then last, that brunch meeting?

A Probably approximately three hours.

Q Was there any further meeting between that brunch meeting and Sunday, December 17th, and the hearing at the Town Hall of Greenburgh on Wednesday, December 20th, any further meeting with Mr. Yottes?

A Yes.

Q Involving Mr. Yottes and yourself?

A Yes.

Q When was the next meeting after that brunch meeting?

A I would just have to say that the 20th is a Wednesday. Right?

Q Yes.

A I would say on Monday and Tuesday I was in touch with Mr. Yottes and met with him on a number of occasions.

Q Was there any further meeting on Sunday, December 17th, after the brunch meeting?

A We may have chatted on the way out. It would be likely that we did converse after the meeting, but I just don't recall.

Q On the way out?

A I would think so.

Q Was there a second meeting with him on that day after the brunch meeting, after you left the brunch meeting?

A Not a specific meeting. We probably conversed in the Holiday Inn. We had a lot of Exhibits, maps, easels and materials to pack up and take out of there after the guests left.

Q Did there come a time when Mr. Yottes mentioned to you this broadcast of December 17th by Station WINS relating to the Plaintiff's book?

A Yes. Yes, he certainly did mention the broadcast.

Q When did that occur?

A I would say, from recollection, either that

Sunday or the next day, Monday. When specifically, I couldn't say.

Q What was your discussion with him in regard to that broadcast?

A We discussed the contents of the review that was made of the Guitar book.

Q Was there any discussion between you and him regarding any action that might be taken with respect to that review broadcast?

A Yes.

Q What was that discussion?

A I decided that it would be advantageous to reprint the review.

Q When did you reach that decision?

A On Sunday and Monday.

Q Did Mr. Yottes at any time give you a copy of that review?

A I would assume he did, because I recall reading it prior to copying it.

Q Do you have with you any paper that was given to you by Mr. Yottes that was a copy of that review?

A No.

Q Do you recall getting such a paper from him?

A I am certain I got it, yes, because I read it.

Q Do you recall asking him to get you such a copy?

A I don't recall the sequence of conversation of it.

Q In other words, you can't recall whether he volunteered a copy to you or you asked him for it?

A I don't know.

Q What became of the copy of the review that was given to you by Mr. Yottes.

A I don't recall.

Q You have no recollection of what became of that?

A No, I have no record.

Q I am referring, Mr. Berger, not only to its present existence or disposition, but after you received it. What did you do with it?

A I have no recollection, sir.

Q Am I correct, therefore, in saying that you were given a copy of this review by Mr. Yottes, and after that you have no recollection as to that copy you were given?

MR. D'ONOFRIO: I have to object to it. That is not what he testified to. I think he is testifying that he does not know where that particular copy is at the present time.

But I am sure certain things were done with reference to that particular copy, or it never would have appeared in the Plaintiff's Exhibit -- whatever it is --

for identification in the first examination.

MR. KNAPP: Plaintiff's Exhibit 4.

MR. D'ONOFRIO: Plaintiff's Exhibit 4.

Q Mr. Berger, you have heard what your Counsel has just said.

My question is, after you received that copy from Mr. Yottes, and I am referring to the day that you received it, what did you do with the copy?

A We had it reprinted.

Q You had it reprinted?

A Yes, sir.

Q Who was the printer?

A I don't know, sir.

Q Who was given the task of having it reprinted?

A Somebody in the office staff. I don't know.

Q You don't know to whom you spoke?

A No, not specifically.

Q When you say not specifically, who might you have spoken to?

A A number of clerks and secretaries working for me.

Q Miss Migliora?

A Miss Migliora would be probably the one.

Q It was to her or someone else in your office that you believe you gave the copy that you believe was given to you

by Mr. Yottes?

A Yes.

Q Had you ever been informed that Mr. Yottes was employed in any capacity by Radio Station WINS?

A No, sir.

MR. D'ONOFRIO: When? I will object to the form of the question unless you state as to when.

MR. MACCHIA: I join in that objection.

Q On or before December 17, 1972, had you ever been informed that Mr. Yottes worked for Radio Station WINS?

MR. MACCHIA: I object.

MR. D'ONOFRIO: I renew my objection.

A No, sir.

Q At any time before this lawsuit was instituted, had you ever been informed that Mr. Yottes had worked or rendered services for Station WINS?

MR. D'ONOFRIO: Please, don't answer that.

MR. MACCHIA: Note my objection.

MR. D'ONOFRIO: Would you state approximately when this lawsuit was started in your questioning?

MR. KNAPP: On or about January 9, 1973.

MR. D'ONOFRIO: Would you read the whole question now

(Whereupon the pending question was read by the reporter)

MR. D'ONOFRIO: Up to January, 1973.

A (Continuing) Negative, no.

Q I hand you Plaintiff's Exhibit 4 for identification on Mr. Yottes' examination, and ask you if this is a copy of the printing that your corporation made of the broadcast with respect to Miss Guitar's book, excluding the numbers and letters in the lefthand side.

MR. D'ONOFRIO: He is excluding the numbers.

A Excluding the numbers, and excluding the Exhibit B, and notations on the bottom, it is a copy.

Q Now, referring to Plaintiff's Exhibit 4, can you tell me who prepared or who was the author or writer of the portion of that Exhibit beginning at the top line with the words "Property Power" down through the italicized paragraph ending in the word "Greenburgh"?

A I believe I was, sir.

Q Who was the author of the next two lines beginning "Respectfully"?

A I believe I was involved with it. I don't recall specifically writing those words. But I did prepare this paper.

Q Do lines 1 through 23 constitute a copy of the material that was given to you by Mr. Yottes?

A Yes, sir.

Q Beginning below line 23, with the line beginning "Ms. Guitar," who was the author of that line?

A I was, sir.

Q Who was the author of lines A and B?

A I was, sir.

Q And line C?

A I was.

Q Line D?

A I was.

Q And line E?

A I was.

Q Would you tell us, please, what was your source for the quotation on lines A and B?

A The notes of the meeting of the Save Irvington Committee at the Irvington High School on December 13th.

Q You are referring to Plaintiff's Exhibit 1M?

A Yes.

Q That is the one before you?

A Both 1M and 2M.

Q Please tell us where in 1M you find the basis for the quotations on lines A and B?

A On the first page of Exhibit 1M, that is a direct quote of Miss Guitar. "I consider my role to be, to do a little conscious must raising, to make you all feel less guilty.

When you bought, you bought more than a house. You bought an environment. And you are entitled to it. This tract is the last piece of green you have. You must preserve it at all costs. Don't feel guilty -- don't let them make you feelguilty. You have an equity in your own environment."

Then in 2M, on the first page, Miss [illegible]dtar said she was there to help the people feel, in quotes, "less guilty" about trying to block the proposal. "You must preserve the greenery. We have to think of yourselves in the next generation."

Q Those passages you have just quoted, Mr. Berger, are the only passages on which you base that quotation A and B, lines A and B in Exhibit 4?

A Give me another moment if you will.

Q Surely.

A (Examining document) Yes, sir.

Q Now, referring to Quotation C in Plaintiff's Exhibit 4, "City people should be made to stay in the city," will you please tell us what your source for that quotation is?

THE WITNESS: Excuse me. I would like to consult with my attorney for a second.

MR. KNAPP: Surely.

(At this point the witness conferred with his Counsel)

A (Continuing) In 1M, Page 7, Third Paragraph on the bottom, the second line, "We should keep the plants in the cities. Everybody would be better off. We can put the green belts in the denser areas. Let's not move the city to the country."

Then, on the second page of 2M, the last paragraph, "Guitar said let's use the land already set up for this (brought out Bridgeport), let's not move the city to the country."

I would like to consult my notes a little further.

That's it.

Q Those are the only sources for this statement on line C "City people should be made to stay in the city"?

A Give me just one more moment before I answer that.

Q Take as much time as you wish.

A Thank you, sir.

That is correct, sir.

Q As to Statement D on Plaintiff's Exhibit 4, what is your source for the statement there "The city should not be robbed of its livelihood by enticing industry to the suburbs"?

MR. D'ONOFRIO: May we have Plaintiff's Exhibit 1, the book?

MR. KNAPP: Off the record.

(Discussion off the record)

A Page 264 of "Property Power," Third Paragraph.

"Is it fair, or even defensible, to rob the city of its livelihood by enticing industry to the subsurbs?"

MR. D'ONOFRIO: Read the next paragraph.

A (Continuing) "The answer is no."

Q That is the sole source for the quotation on line D?

A Yes, sir.

Q Now, with respect to the final quotation on line E, "I would be happy to throw sand in the wheels of progress," what is your source for that?

A An article or review, June, 1972,in Mademoiselle Magazine, entitled "An Insider's Guide For the Political Innocent," by Mary Anne Guitar, on the Fifth Page.

MR. D'ONOFRIO: It is on the Fifth Page of --

THE WITNESS: Of the photocopy, which I will be glad to show you.

MR. KNAPP: May we have this marked for identification, please.

MR. D'ONOFRIO: Let him finish first.

It is on the Fifth Page of the photocopy.

A (Continuing) In the third column to the right, in the Third Paragraph from the top, Third Sentence.

"I had been a strong advocate of land preservation

and locally opposed to 'mindless growth' and left little doubt that, if elected, I would be happy to throw sands in the wheels of progress."

MR. D'ONOFRIO: Let the record show, by Mr. D'Onofrio, Attorney for Defendant Robert Martin Corporation, that I am only presenting to the Attorney for the Plaintiff a photocopy of the page that I am going to mark with a 5 in ink, Page 5, the page the witness quoted from, for only one reason, Mr. Knapp, and that is that there are other markings on the other pages which I don't believe have anything to do with this lawsuit, and I am sure, if you want to, you can get a complete copy.

If not, if you can't obtain it, I would direct the witness, if he still has this copy of Mademoiselle, without these lines that were added by somebody else, to make you a clear copy of it.

But I will give you Page Numbered 5, if you wish, the one he quoted from.

MR. KNAPP: Thank you. Let's mark it as Plaintiff's 3M.

(Page 5 from photocopy, excerpt from Mademoiselle Magazine, was marked Plaintiff's Exhibit 3M for identification, this date)

BY MR. KNAPP:

Q Mr. Berger, I read the last clause of the sentence that you now just quoted, and I ask you if it does not read "I would be happy to throw sand in the wheels of 'progress' "?

A Let me see it, sir. With all due respect, sir, the quotation mark after the word "progress" is not very clear, it shows a smudge after the word of and before the word "progress."

Similar smudges appear throughout the paper. I would nor be definite that that is a quotation mark.

Q Before the word "progress"?

A That's right, sir.

Q Can you find any place on there, prior to that final quotation mark after "progress" whether there is an open quotation mark?

A There is a closed quotation mark after the word "growth," three lines up.

Q There is no open quotation mark?

A I don't see any, sir.

Q Will you be kind enough, Mr. Berger, to take a look at that mark before "progress" with a magnifying glass, and see if you do not agree that it is an open quote?

MR. D'ONOFRIO: Let the record show that Mr. Knapp has given the witness a magnifying glass.

Q (Examining with magnifying glass) Yes, I would

now agree with you. The quotation mark before "progress" is very legible under magnification, although it appeared only as a smudge without using it.

The quotation mark after "progress", even under magnification, is much more -- much darker, much more legible than the one prior to "progress."

But, without magnification, the one before "progress" is just a smudge.

Q May we know the date of this article?

MR. D'ONOFRIO: June, 1972.

MR. KNAPP: In Mademoiselle?

MR. D'ONOFRIO: Yes.

Q When did this article of June, 1972, which Plaintiff's Exhibit 3M is a part of, first come to your attention, Mr. Berger?

A I am not quite certain.

Q Can you give us an approximate date?

A It would have to be in December of 1972.

Q Would that have been before or after the meeting in the High School on December 13th?

A I would guess it was after that meeting.

MR. D'ONOFRIO: I would rather you didn't guess. If you don't know, say you don't know.

THE WITNESS: I don't know.

Q Who brought it to your attention?

A I don't know, sir.

Q Do you recall where you first read it, where you were at the time?

A I don't recall. Probably it was in my office, but I don't recall.

MR. D'ONOFRIO: Off the record.

(Discussion off the record)

Q Following the High School meeting of December 13, 1972, had you instructed anyone to get information on Miss Guitar?

A Please rephrase that.

MR. KNAPP: Read it back.

(Whereupon the pending question was read by the reporter)

MR. D'ONOFRIO: I am going to object to the form of the question. Please rephrase your question. I instruct the witness not to answer.

MR. KNAPP: Read it back again.

(Whereupon the pending question was read by the reporter)

Q After the meeting in the Irvington High School on December 13, 1972, and prior to the publication of Plaintiff's Exhibit 4, had you requested anyone to find and bring

to you information concerning Miss Guitar?

MR. D'ONOFRIO: I object to the form of the question. The word information is very ambiguous, very vague.

If you specifically set forth what you mean, and what you are talking about, I have no objection to letting the witness answer the question, as to the substance of that which you are looking for.

Q (Continuing) I am asking, Mr. Berger, if you had requested anyone -- and I refer this to the question -- to find out for you any facts or personal data concerning Miss Guitar, as to her background, her work as a writer, or her work in environmental matters, politics or otherwise?

MR. D'ONOFRIO: I would much rather those questions be set forth individually concerning the various aspects of the information you are inquiring about.

But, if Mr. Berger can answer that question as it was presented to him, I have no objection to him doing so.

Let him read back the question, and listen to it. If you can answer it, then answer it.

(Whereupon the preceding question was read by the reporter)

A I have to answer the question in two parts.

(a) Prior to the meeting of December 13th, we had

a copy or I had a copy of Miss Guitar's book "Property Power," and I had read her book a few months prior to her appearance at the High School on December 13th. I may very well have had the Mademoiselle review at that time.

(b) After her appearance on December 13th we did call the publisher, to get reviews of her book, whatever reviews were available.

The Mademoiselle article was either in my possession with the book a few months before or came with a number of reviews that we obtained.

Q Did you do any other thing to get information of the type I have specified?

A No.

Q Who called the publisher?

A My secretary, Miss Migliora, I believe. I am quite certain.

Q Did you see the material the publisher sent her?

A Yes. And that is why I can't say offhand whether the Mademoiselle article was in that packet or was in my possession prior to that.

Q I didn't hear the last part of the answer.

A I said I am not sure whether the Mademoiselle article was in my possession a few months before or whether it

was part of the group of reviews that we obtained possibly from Doubleday.

Is that the publisher?

Q Yes, Doubleday.

Do you have with you the material which Doubleday sent?

A I don't.

Q Have you searched your files to see whether that material is available at this time?

A I haven't searched my files, no.

Q Would you please search your files and see if you can discover material that was sent you by Doubleday and produce it for us?

MR. D'ONOFRIO: Mr. Berger turned over those reviews to me, and I was not aware they would come up at this examination this morning.

In fact, I gave them to my secretary this morning to, more or less, put them in some form or shape, as they were just photocopies of various reviews.

What I will do is, I will make a photocopy of the reviews and enough for each one of the parties here, and I will send you each a copy of that.

They may consist of, maybe, eight or ten reviews by various book reviewers throughout the United States,

and they were cut out of newspapers and photocopies were made of those.

Mr. Berger did give them to me, and, in fact, if this examination goes on this afternoon I will go back to my office and bring them here. Otherwise I will do as I said.

MR. KNAPP: Very well.

MR. D'ONOFRIO: If you really need them --

Off the record.

(Discussion off the record)

BY MR. KNAPP:

Q Do you know whether those reviews and other material from Doubleday, if there were other material, were accompanied by a covering letter from Doubleday?

A I don't recall.

Q Do you recall the name of the person at Doubleday?

A No.

MR. D'ONOFRIO: Let the record show I don't have a copy of any covering letter.

Reel 3

Q With respect to my previous question, as to whether you had sought information about the Plaintiff, Miss Guitar, and I specified that type of information, this is the extent that you have testified to now, to which you did seek such information; is that correct?

A Yes.

MR. KNAPP: Off the record.

(Discussion off the record)

MR. KNAPP: I ask that a space be left in the Deposition for Mr. Berger to identify these collectively as Plaintiff's Exhibit 4.

MR. D'ONOFRIO: Instead of doing that, Mr. Knapp, I will stipulate with you that these will identified as Plaintiff's Exhibit 4M for identification, and whatever the number are I will furnish you with whatever I have.

Plaintiff's Exhibit 4M will consist of photocopies of reviews made by various reviewers, mostly with respect to newspapers throughout the United States, on Miss Guitar's book "Property Power."

MR. CERCHIARA: Which were provided by Doubleday Publishers.

MR. D'ONORFRIO: To Robert Martin Corporation.

These will be marked and will be distributed to all the parties here.

(Group of reviews from Doubleday were deemed marked as Plaintiff's Exhibit 4M for identification, this date)

BY MR. KNAPP:

Q Are you familiar with the amended complaint and

your answer in this action, Mr. Berger?

MR. D'ONOFRIO: Mr. Knapp, I am registering the same objection that was registered at the last examination concerning the pleadings in this matter.

I don't think it is a proper subject for examination. And I will not allow my witness to testify with respect to anything concerning the complaint or answering pleadings unless so ordered by the Court.

MR. KNAPP: Would you read that back?

(Whereupon the statement by Mr. D'Onofrio was read by the reporter)

MR. KNAPP: I will proceed, then, Mr. D'Onofrio, by asking these questions. And, if agreeable to you, we can stipulate that the answer you have just given applies to each question rather than repeating it.

MR. D'ONOFRIO: I can't do that until I hear your question.

I will object to each one specifically after I hear your question.

MR. KNAPP: All right.

BY MR. KNAPP:

Q I draw your attention, Mr. Berger, to Paragraph 15 of the amended complaint, as to which your answer has admitted "Robert Martin Corporation is engaged in the venture of developing a certain tract of land in the Town of Green-

burgh," etcetera.

Now, I ask you if that venture does not include building on that tract of land?

MR. D'ONOFRIO: Read that back, please.

(Whereupon the pending question was read by the reporter)

MR. D'ONOFRIO: May I see Paragraph 15 of the complaint, please?

MR. KNAPP: Yes. (Handing).

MR. D'ONOFRIO: Note my objection, and I instruct the witness not to answer.

I object to the form of the question and instruct the witness not to answer.

Q Mr. Berger, you previously testified that Robert Martin Corporation is engaged in a project known as Tarrygreen.

Does that project include building upon a tract of land in Greenburgh?

MR. D'ONOFRIO: Answer it.

A It becomes a question of terminology. We are not engaged presently in developing this tract, and we are only processing it and planning it.

Q What is embraced in the application now before the Planning Commission?

A Please be more specific.

Q What is your application now before the Planning Commission?

A An application for a plan, for approval of a plan, which includes housing, office buildings and a small shopping center.

MR. KNAPP: Off the record.

(Discussion off the record)

Q Did you ever hear the broadcast of December 17, 1972 in regard to Miss Guitar's book over Station WINS?

A No, sir.

Q Did you ever hear a tape of that broadcast?

A I read the complaint --

MR. D'ONOFRIO: The question is, did you ever hear a tape?

THE WITNESS: I am not certain. I may have, but I am not certain.

Q Where might you have heard such a tape?

A In discussion with Mr. Yottes.

Q He had a tape with him?

A I am not sure, sir. I am not sure if he had a tape or typed copies of what was said.

Q I refer now to Plaintiff's Exhibit 4. I direct your attention to line 6 in that statement. The sentence is, "Her book is Property Power. It amounts to a handbook of how

to keep others out."

Do you regard that statement as true and accurate?

MR. D'ONOFRIO: Objection. I instruct the witness not to answer.

MR. KNAPP: What is the ground for the objection?

MR. D'ONOFRIO: He is not here to give any opinions.

Q Mr. Berger, is there a basis for those sentences in Miss Guitar's book?

MR. D'ONOFRIO: Objection. Don't answer it. I object to the form of the question; same reason.

Q I refer you to line 10 on Exhibit 4, the sentence "The battle cry seems to be 'keep the others out.' "

I ask you if you know of any basis for that sentence in Miss Guitar's book?

MR. D'ONOFRIO: Objection. Don't answer it. Same objection. Same reasons.

Q On the same line 10 I refer you, on line 10, to the sentence "People become secondary to trees and space, especially if the people are newcomers," and I ask you if you know of any basis for that statement in Miss Guitar's book?

MR. D'ONOFRIO: Same objection; same reason.

Q I refer you now to Paragraph 19 of the complaint, and the quotation therein included, and draw your attention to the sixth line beginning with the words "Property Power".

With respect to that sentence, and each of the sentences that follow within that quotation, I ask you if you know any basis for each and every one in Miss Guitar's book?

MR. D'ONOFRIO: Same objection; same reasons.

Q At the meeting on December 20, 1972, Mr. Berger, you distributed, I believe you testified, this Plaintiff's Exhibit 4 or caused it to be distributed.

A Yes.

Q And you distributed other material at that time?

A Yes, sir.

Q Do you have copies of that other material with you?

MR. D'ONOFRIO: What did you distribute at that meeting?

THE WITNESS: This (indicating).

MR. D'ONOFRIO: Is that everything?

THE WITNESS: Yes.

MR. D'ONOFRIO: Let the record show that the witness has given to Mr. Knapp, Attorney for the Plaintiff, certain materials consisting of:

A map, which is entitled "Tarrygreen Illustrative Development Plan."

A booklet entitled "Tarrygreen, A Balanced Community in Westchester," fact sheet, consisting of four pages.

And a reproduced copy of a paper entitled "The Daily News, Tarrytown, New York, Monday, December 11, 1972," With the sub-title "Comment: Closed Doors of Suburbs Must Open to Future," by Donna Boylan, Staff Writer.

We are giving those to Mr. Knapp.

MR. KNAPP: Thank you.

BY MR. KNAPP:

Q These materials, that have just been enumerated by Mr. D'Onofrio, are all of the fact sheets that you distributed at that meeting?

MR. D'ONOFRIO: I would appreciate it if you took the word "fact" out, because part is fact sheets and part of it is other material.

Would you mind taking the word out?

MR. KNAPP: All right. Now, read back the question without the word fact in it.

(Whereupon the pending question was read by the reporter as follows:

"Q These materials, that have just been enumerated by Mr. D'Onofrio, are all of the sheets distributed at that meeting?")

A To the best of my recollection.

Q Who actually distributed these sheets?

A Miss Migliora.

MR. KNAPP: I think, subject to these open items, we don't have anything further.

MR. CERCHIARA: No questions.

MR. MACCHIA: No questions.

MR. D'ONOFRIO: I have none.

(Whereupon the witness was excused)

ooo

Walter R. Berger

Subscribed and sworn to before me,
this 11 day of May, 1973.

Muriel Broxmeyer

MURIEL BROXMEYER
Notary Public, State of New York
No. 60-0463055
Qualified in Westchester County
Commission Expires March 30, 1975

I N D E X

WITNESS: MARTIN S. BERGER

EXHIBITS

PLAINTIFF'S	DESCRIPTION	FOR IDENTIFICATI
1M	Group of eleven pages, "Notes," etc.	10
2M	Group of three papers, entitled "Panel," etc.	11
3M	Page 5 from photocopy, excerpt from Mademoiselle Magazine.	30
4M	Group of reviews from Double-day.	38

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C E R T I F I C A T E

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

I, GARFIELD SILVERSTEIN, a Certified Shorthand Reporter and Notary Public in and for the State of New York, od hereby certify:

That MARTIN S. BERGER, the witness whose Deposition is hereinbefore set forth, was duly sworn by me and that such Deposition is a true record of the testimony given by such witness.

I FURTHER CERTIFY that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 19TH day of April, 1973.

Garfield Silverstein

GARFIELD SILVERSTEIN, C.S.R.

DEPOSITION OF MARTIN BERGER

[48]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

(SAME TITLE)

----------x

51 West 51st Street
New York, N.Y.

April 22, 1974
1:20 o'clock p.m.

Continued deposition of Defendant MARTIN S. BERGER, taken by Plaintiff pursuant to order of this court.

[49]

Appearances:

MESSRS. WINDELS & MARX,
Attorneys for the Plaintiff,
51 West 51 Street,
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BY: ROBERT P. KNAPP, ESQ.,
J. DENNIS McGRATH, ESQ.,
Of Counsel.

DEPOSITION OF MARTIN BERGER

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BY: JOHN J. MACCHIA, ESQ.,
RAYMOND J. SOFFIENTINI, ESQ.,
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BY: VINCENT CERCHIARA, ESQ.,
Of Counsel.

MESSRS. MITCHELL, MINA & MADISON,
Attorneys for Defendants Margaret Schneider and Gerald Lloyd
127 John Street,
New York, New York
BY: F. V. MINA, ESQ.,
Of Counsel.

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MR. D'ONOFRIO: Let the record show that Mr. Martin Berger, the witness, has been brought back pursuant to the Order dated February 8, 1974, issued by Judge Carter of the United States District Court, said Order indicating that the Defendant is required to come back and answer all questions which he refused to answer on the first Deposition.

Pursuant to that Order, I have produced Mr. Berger today.

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MARTIN S. BERGER,

having been previously duly sworn, resumed the stand and testified further as follows:

EXAMINATION BY

MR. KNAPP:

Q You are still under oath from the previous Deposition, Mr. Berger.

A Right, sir.

Q Mr. Berger, I am going to read to you the questions that were asked of you on a previous Deposition and I will ask you to answer them as the Judge has directed.

Are you familiar with the amended complaint and your answer in this action, Mr. Berger?

A Off the record?

Q No, please stay on the record.

MR. D'ONOFRIO: Just answer the question.

Are you familiar with it?

A (Continuing) No.

MR. KNAPP: Off the record.

(Discussion off the record)

Q I draw your attention now, Mr. Berger, to Plaintiff's Exhibit 4, and I direct your attention to Line 6 in that Exhibit.

On that line, I am going to read to you the passage beginning with "Her book is Property Power. It amounts to a handbook on how to keep others out."

Do you regard that statement as true and accurate?

A Having read the book, it would be my personal interpretation that one could construe the book to be a handbook on how to keep others out.

Q Would you please refer us to any passage or passages in the book that form the basis for your statement that you have just made.

MR. D'ONOFRIO: I am going to object to that. I think this is outside the scope of the order, Mr. Knapp. He has answered the question.

Q Mr. Berger, is there a basis for those sentences I have just quoted to you in Miss Guitar's book?

MR. MINA: Objection, on the grounds that has been asked and answered.

MR. D'ONOFRIO: It is outside the scope of the Order.

MR. KNAPP: I find that question is on Line 8, on Page 40, which is one of the questions that the Judge directed him to answer in his Order.

MR. D'ONOFRIO: Let me look at it.

Yes, you can answer that.

A My answer would be yes.

Q What is that basis?

MR. D'ONOFRIO: I am sorry, Mr. Knapp, but I didn't notice it was one of the questions.

A I have to re-read the book. It has been months since I looked at it.

Q Since you read the book?

A Yes.

Q Mr. Berger, I am going to have to ask you to re-read the book and we will pick up at a later time.

MR. D'ONOFRIO: Mr. Knapp, can I suggest, perhaps, that if we leave a space, and have Mr. Berger go over the book and indicate when he signs this addendum to this examination, he can fill in the answer, if that would be satisfactory to you.

MR. KNAPP: No, I am afraid I prefer to examine him

on that, Mr. D'Onofrio.

MR. MINA: Would the record note my objection to the question on the ground that the witness has already answered that the basis for his opinion was upon reading the book.

THE WITNESS: And, for the record, I am not going to be available for the next few months.

MR. D'ONOFRIO: Don't say anything else, Mr. Berger, please.

BY MR. KNAPP:

Q Mr. Berger, I refer you now to Line 10 on Exhibit 4 that you now have before you, and the sentence that reads "The battle cry seems to be 'keep the others out.'"

I ask you if you know of any basis for that sentence in Miss Guitar's book?

A My recollection of the book is hazy at this time, sir. It has been months.

Q On that same Line 10, I refer you to the sentence "People become secondary to trees and space...especially if the people are newcomers."

I ask you if you know of any basis for that statement in Miss Guitar's book?

A I couldn't give you any specific basis, because of my hazy recollection of the book.

Q I now draw your attention to Paragraph 19 of the complaint, and to the sixth line -- this is the amended complaint -- it is the sentence that reads "Property Power renounces progress even if it means decent liveable homes for people."

It is the seventh line.

A What is the question?

Q With respect to that sentence, and each of the sentences that follow within that quotation, I ask you if you know any basis for each and every one in Miss Guitar's book?

A It was my impression from having read the book that one could construe that these were her thoughts.

Q My question is if you know of any basis for each and every one of those sentences in Miss Guitar's book?

MR. MINA: I renew my objection on the ground that the question has been asked and answered. He said the book as a whole gave him that impression.

MR. KNAPP: Read the question back.

(Whereupon the preceding question was read by the reporter)

MR. D'ONOFRIO: You can answer that, if you can.

A My general impression of the book was that it was a handbook on how to keep people -- keep others out.

Q Now, my question, Mr. Berger, is not as to your

general impression. It is if you know any basis for each and every one of those sentences in Miss Guitar's book?

MR. MINA: In view of the answer, would the record note a continuing objection to that line of questioning.

A I couldn't remember specific quotations at this time. It has been some months since I read the book, sir.

MR. KNAPP: Subject to the exception that I noted earlier, which is that I wish to continue this examination, and find out from Mr. Berger the answers to those questions, I have no further questions.

MR. D'ONOFRIO: As I indicated to you, Mr. Knapp, I would suggest that if you would like Mr. Berger to go over the book and try to point out the specific places in the book that he feels pertain to these particular quotations and these particular words that you bring up, that you leave a space in the examination, and we will have him fill it in, and submit it to you, and if, at that time you feel it is not sufficient, we are prepared to bring him back again, if there is any reason for that.

Other than that, I see no other way it can be done.

MR. KNAPP: Off the record.

(Discussion off the record)

MR. KNAPP: It is understood that as soon as the examination is transcribed and submitted to Mr. Berger,

he will indicate in writing his answers to those questions. And if at that time I desire to examine him further, on oral Deposition, I will notify you.

Otherwise, we will accept those answers.

MR. D'ONOFRIO: Okay.

MR. MINA: Off the record.

(Discussion off the record)

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Subscribed and sworn to before me,
this 31st day of July, 1974.

MARGARET MIGLIORE
Notary Public, State of New York
No. 60-4509190
Qualified in Westchester County
Commission expires March 30, 19 75

CERTIFICATE

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

I, GARFIELD SILVERSTEIN, a Certified Shorthand Reporter and Notary Public in and for the State of New York, do hereby certify:

That MARTIN S. BERGER, the witness whose Deposition is hereinbefore set forth, was duly sworn by me and that such Deposition is a true record of the testimony given by such witness.

I FURTHER CERTIFY that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 26th day of August, 1974.

Garfield Silverstein

GARFIELD SILVERSTEIN, C.S.R.

The following represents those questions left open in the Examination Before Trail of Martin S. Berger, Aprill 22, 1974, 1:20 p.m. The questions left open are as follows:

Page 51, Line 18
Page 51, Line 24
Page 52, Line 11
Page 53, Line 12
Page 53, Line 19
Page 54, Line 2
Page 54, Line 9
Page 54, Line 14
Page 54, Line 25.

This is my general impression and conclusion from reading the entire book; specifically, Chapter 4, and Chapter 9 support this conclusion on my part.

Martin S. Berger

Date: 7/31/74

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 31st DAY OF July, 1974.

Notary Public, State of New York
No. 60-4508190
Qualified in Westchester County
Commission Expires March 30, 19 75

INTERROGATORIES OF PLAINTIFF AND HER ANSWERS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

(SAME TITLE)

----------x

S I R S :

Plaintiff, Mary Anne Guitar, for her answers to the Interrogatories of defendants, Robert Martin Corporation, Robert Weinberg, and Martin Berger, states as follows:

* * *

INTERROGATORY 18. State in detail in what respects or particulars the facts contained in Exhibits A and B are false.

ANSWER 18. So much of the statements contained in Exhibits A and B as set forth in paragraph 19 of the Complaint are false in that they have no foundation in or relation to any of the statements contained in the plaintiff's book. So much of the statements as are contained in Exhibit B and appearing as a, b, and d of paragraph 23 of the Complaint are

false in that they are represented to be quotations of statements made by the plaintiff, but none of them were made by the plaintiff. Likewise c in paragraph 23 of the Complaint was not a remark made by the plaintiff, but the plaintiff does in truth and in fact believe that the city should not be destroyed by the suburbs enticing industry.

INTERROGATORY 19. Set forth the acts, conduct or words on the part of any defendant which it is claimed to be malicious.

ANSWER 19. The formulation, preparation and publication of the words set forth in paragraph 19 of the Complaint by the defendants Broadcasting (station WINS), Jeffers, Martin, Weinberg and Berger were malicious. The formulation, preparation and publication of the words set forth in a, b and d of paragraph 23 of the Complaint by Martin, Weinberg and Berger were malicious. The participation, formulation, preparation and publication of the foregoing by defendant Yottes were malicious, and the defendant Westinghouse Electric is chargeable and accountable for the malice of station WINS.

INTERROGATORY 20. State in what particulars all such acts, conduct or words were malicious?

ANSWER 20. The acts, conduct and words were malicious in that the defamatory matters were published by

defendants with knowledge that the words were defamatory, with specific intent to injure plaintiff, without just cause or excuse, and with the intention of furthering defendants' own purposes.

INTERROGATORY 21. Set forth in detail any rules, statutes or procedures which it is claimed to have been violated.

ANSWER 21. This interrogatory is objectionable in that it relates to a question of law but the plaintiff answers nevertheless that some of the rules, statutes and procedures which were violated are as follows:

The National Association of Broadcasters Radio Code; Title 47 United States Code §§317, 501, 502, 503 and 508; Federal Communications Commission Rules relating to Fairness.

* * *

INTERROGATORY 23. Set forth the acts, conduct or words on the part of any defendant which it is claimed to be a result of conspiracy, collusion or connivance and the particulars thereof.

ANSWER 23. Until the plaintiff has completed her discovery procedure, she cannot give a full and complete answer, and will supplement this answer promptly after this information becomes available.

WINDELS, MERRITT & INGRAHAM
Attorneys for Plaintiff
Mary Anne Guitar

By s/s Robert P. Knapp, Jr.
A member of the firm

40 Wall Street
New York, New York 10005
Tel: WH 4-0960

INTERROGATORIES OF PLAINTIFF AND HER ANSWERS

VERIFICATION

STATE OF CONNECTICUT)
: ss.:
COUNTY OF FAIRFIELD)

MARY ANNE GUITAR, being duly sworn deposes and says:

That she resides at Old Redding Road, Redding, Connecticut; that she is the plaintiff in the within action; that deponent has read the foregoing answers to Interrogatories and knows the contents thereof; that the same are true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters deponent verily believes them to be true.

Mary Anne Guitar
Mary Anne Guitar

Sworn to before me this
17th day of April, 1973.

ANSWER OF WESTINGHOUSE ELECTRIC CORPORATION, WESTINGHOUSE BROADCASTING CO., INC. (DEL.) AND H. PAUL JEFFERS TO THE SECOND AMENDED COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

(SAME TITLE)

----------x

Defendants Westinghouse Electric Corporation, Westinghouse Broadcasting Company, Inc., herein "Broadcasting" and H. Paul Jeffers for their answer to the second amended complaint:

1. Deny that they have knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 1 of the second amended complaint.

2. Admit the allegations contained in paragraph 2 of the second amended complaint.

3. Admit that defendant Broadcasting is a Delaware corporation, is the owner of radio station WINS, is a wholly owned subsidiary of Westinghouse Electric Corporation and is part of a group known as Broadcasting, Learning and Leisure Time, and except as so admitted deny each and every allegation of paragraph 3 of the second amended complaint.

4. Deny each and every allegation contained in paragraph 4 of the second amended complaint.

5. Deny that they have knowledge or information

sufficient to form a belief as to each and every allegation contained in paragraph 5 of the second amended complaint.

6. Deny that they have knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 6 of the second amended complaint.

7. Deny that they have knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 7 of the second amended complaint.

8. Deny that they have knowledge or information sufficient to form a belief as to each and ever allegation contained in paragraph 8 of the second amended complaint.

9. Deny each and every allegation contained in paragraph 9 of the second amend d complaint.

10. Deny that they have knowledge or information sufficient to form a belief as to each and every allegation contained in para raph 10 of the second amended complaint.

11. Admit that defendant Westinghouse Electric Corporation is a Pennsylvania corporation; that defendant Broadcasting is a Delaware corporation and that defendant Jeffers is a resident of the State of New York and except as so admitted, deny that they

have knowledge or information sufficient to form a belief as to each and every remaining allegation contained in paragraph 11 of the second amended complaint.

12. Deny that they have knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 12 of the second amended complaint.

13. Deny that they have knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 13 of the second amended complaint.

14. With respect to paragraph 14 of the second amended complaint, deny that the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs and arises under the laws of the United States Code, to wit, title 47 United States Code, subchapter III, and deny that they have knowledge or information sufficient to form a belief as to the allegation that this action is between citizens of different states.

AS TO THE FIRST CAUSE OF ACTION AGAINST DEFENDANTS MARTIN, WEINBERG, BERGER AND YOTTES, DEFENDANTS WESTINGHOUSE ELECTRIC, BROADCASTING AND H. PAUL JEFFERS:

15. Deny that they have knowledge or information sufficient to form a belief as to each and every allegation of paragraph 15 of the second amended complaint.

ANSWER OF WESTINGHOUSE ELECTRIC CORPORATION, WESTINGHOUSE BROADCASTING CO., INC. (DEL.) AND H. PAUL JEFFERS TO THE SECOND AMENDED COMPLAINT

16. Admit that on December 17, 1972 Westinghouse Broadcasting Co. Inc. (Del.) through its station WINS and defendant Jeffers, published a review of a book written by plaintiff, a copy of which review is substantially correctly quoted in Exhibit A to the amended complaint, and except as so admitted, deny each and every allegation contained in paragraph 16 of the second amended complaint.

17. Admit that plaintiff's book had a publication date of 1972, and except as so admitted, deny that they have knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 17 of the second amended complaint.

18. Deny each and every allegation contained in paragraph 18 of the second amended complaint.

19. Admit that defendant Jeffers, in the course of his review of plaintiff's book, published the words that are set forth in paragraph 19 of the second amended complaint, and except as so admitted, deny each and every allegation contained therein.

20. Deny each and every allegation contained in paragraph 20 of the second amended complaint.

21. Deny that they have knowledge or information sufficient to form a belief with respect to the allegations contained in paragraph 21 of the second amended complaint.

ANSWER OF WESTINGHOUSE ELECTRIC CORPORATION, WESTINGHOUSE BROADCASTING CO., INC. (DEL.) AND H. PAUL JEFFERS TO THE SECOND AMENDED COMPLAINT

22. Deny each and every allegation contained in paragraph 22 of the second amended complaint.

23. Admit that the four sentences set forth in paragraph 23 of the second amended complaint are substantially correctly quoted and except as so admitted deny each and every allegation contained therein.

24. Deny each and every allegation contained in paragraph 24 of the second amended complaint.

25. Deny each and every allegation contained in paragraph 25 of the second amended complaint.

26. Deny each and every allegation contained in paragraph 26 of the second amended complaint.

27. Deny each and every allegation contained in paragraph 27 of the second amended complaint.

AS TO THE ALLEGED SECOND CAUSE OF ACTION AGAINST DEFENDANTS WESTINGHOUSE ELECTRIC, BROADCASTING, JEFFERS AND YOTTES, DEFENDANTS WESTINGHOUSE ELECTRIC, BROADCAST AND JEFFERS:

28. With respect to paragraph 28 of the second amended complaint, repeat and reallege each and every denial and admission set forth in paragraphs 1 through 20 hereof.

ANSWER OF WESTINGHOUSE ELECTRIC CORPORATION, WESTINGHOUSE BROADCASTING CO., INC. (DEL.) AND H. PAUL JEFFERS TO THE SECOND AMENDED COMPLAINT

29 Deny each and every allegation contained in paragraph 29 of the second amended complaint.

30. Admit each and every allegation contained in paragraph 30 of the second amended complaint, except defendant Jeffers denies knowledge or information sufficient to form a belief as to each and every allegation contained therein.

31. Admit that defendant Jeffers published the words quoted in paragraph 31 of the second amended complaint, and except as so admitted, deny each and every allegation contained therein.

32. Deny each and every allegation contained in paragraph 32 of the second amended complaint.

33. Deny each and every allegation contained in paragraph 33 of the second amended complaint.

34. Deny each and every allegation contained in paragraph 34 of the second amended complaint.

35. Deny each and every allegation contained in paragraph 35 of the second amended complaint.

AS TO THE ALLEGED THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS, DEFENDANTS WESTINGHOUSE ELECTRIC, BROADCASTING AND JEFFERS:

ANSWER OF WESTINGHOUSE ELECTRIC CORPORATION, WESTINGHOUSE BROADCASTING CO., INC. (DEL.) AND H. PAUL JEFFERS TO THE SECOND AMENDED COMPLAINT

36. With respect to paragraph 36 of the second amended complaint, repeat and reallege each and every admission and denial contained in paragraphs 1 through 26 and 29 through 34 hereof.

37. Deny each and every allegation contained in paragraph 37 of the second amended complaint.

38. Deny each and every allegation contained in paragraph 38 of the second amended complaint.

39. Deny each and every allegation contained in paragraph 39 of the second amended complaint.

FOR A FIRST AFFIRMATIVE DEFENSE TO THE COMPLAINT, DEFENDANTS WESTINGHOUSE ELECTRIC, BROADCASTING AND JEFFERS ALLEGE:

40. The complaint fails to state a claim against defendants Westinghouse Electric, Broadcasting and Jeffers upon which relief can be granted.

FOR A SECOND AFFIRMATIVE DEFENSE TO THE COMPLAINT, DEFENDANTS WESTINGHOUSE ELECTRIC, BROADCASTING AND JEFFERS ALLEGE:

41. Insofar as the matter complained of consists of statements of fact, said statements are true in substance and

fact; insofar as the matter complained of consists of expressions of opinion, said expressions are fair comment upon facts truly stated. Said comment is in relation to a matter of public interest; expressed said defendants honest opinion with respect to plaintiff's book; was published without malice toward plaintiff, and was and is privileged as fair comment.

FOR A THIRD AFFIRMATIVE DEFENSE TO THE COMPLAINT, DEFENDANTS WESTINGHOUSE ELECTRIC, BROADCASTING AND JEFFERS ALLEGE:

42. The publications of which plaintiff complains concerned a matter of public interest, was published without malice toward plaintiff, and was and is privileged under the federal and state constitutions.

WHEREFORE, said defendants demand judgment dismissing the complaint together with the costs and disbursements of this action.

TOWNLEY, UPDIKE, CARTER & RODGERS

By James W. Rodgers
A Member of the Firm
Attorneys for Defendants Westinghouse Electric Corporation, Westinghouse Broadcasting Co., Inc., and H. Paul Jeffers

Office and P. O. Address
220 East 42nd Street
New York, New York 10017
(212) 682-4567

EXCERPTS FROM DEPOSITION OF H. PAUL JEFFERS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

(SAME TITLE)

----------x

July 30, 1973,
10:00 o'clock a.m.

Deposition of Defendant H. PAUL JEFFERS taken by Plaintiff pursuant to Notice.

ooo

121

Beekman Reporting Service
Certified Shorthand & Stenotype Reporters
150 Nassau Street
New York, N.Y. 10038
WORTH 2-5954

EXCERPTS FROM DEPOSITION OF H. PAUL JEFFERS

* * *

A I phoned some publishers to indicate that I was undertaking to do book reviews and outlined for them the general scope of what I intended to do and indicated I would be interested in receiving not books but press releases and other material relating to forthcoming books, catalogues, and that sort of thing, of books that were in print or about to be published. I did that.

Q But you did not ask to be sent review copies of books?

* * *

A I did not ask any publisher to put me on a general list of persons who would get review copies. There were occasions where I may have phoned a publisher specifically to request a particular copy of a book.

Q But you did, if I understand you correctly, ask

EXCERPTS FROM DEPOSITION OF H. PAUL JEFFERS

certain publishers to put you on a mailing list?

A Yes.

Q For publicity material, and so on?

A Yes, sir.

Q What publishers did you ask for that?

A I don't recall the complete list, even though it was a short one, but I remember contacting Random House, McGraw-Hill, Doubleday, Simon & Schuster. I think I contacted Prentice Hall, and some others.

I don't recall the complete list.

Q And you did this at the time you embarked on book reviewing?

A Yes, sir.

Q For Station WINS?

A Yes.

Q And these publishers that you have named you contacted by telephone?

A Yes.

Q And they put you on the mailing list?

A Some did and some didn't.

* * *

EXCERPTS FROM DEPOSITION OF H. PAUL JEFFERS

Jeffers (76)

* * *

Q Have you ever heard that review copies of books constitute a sizeable source of income for book reviewers?

A Yes, sir.

MR. MACCHIA: I object to that. Just note my objection.

Jeffers (77)

* * *

Q Mr. Jeffers, how did you ordinarily get your copies of books that you reviewed?

A I bought them.

Q At the retail stores?

A Yes, sir.

Q For cash?

A Sometimes cash, and sometimes I charged them.

* * *

Jeffers (78)

* * *

Q At any time while you were employed by WINS, did you ever broadcast a book review at the request of the publisher of the book or the author of the book?

EXCERPTS FROM DEPOSITION OF H. PAUL JEFFERS

A Never.

Q Or at the request of anyone acting for or on behalf of the publisher or author?

A No, sir.

Q While you were at WINS, did you ever review any book at the suggestion or direction of anyone else at the station?

A No, sir.

Q Did you ever review a book at the direction or suggestion of anyone outside of the station?

A No, sir.

* * *

* * *

Q Have you ever met the Defendant, Robert Weinberg?

A No, sir.

Q Had you ever heard of him before this lawsuit?

A No.

Q Have you ever met the Defendant Martin Berger?

EXCERPTS FROM DEPOSITION OF H. PAUL JEFFERS

A No, sir.

Q Had you ever heard of him before this lawsuit?

A No.

* * *

COMPLAINT IN 73 CIV. 5287

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

MARY ANNE GUITAR,

Plaintiff,

-against-

MARGARET MIGLIORE and GERALD DAVID LLOYD,

Defendants.

----------X

COMPLAINT

* * *

9. Defendants Margaret Migliore and Gerald David Lloyd were and are now residents of the State of New York.

10. Defendant Migliore was the personal secretary of Berger and Weinberg. Defendant Lloyd was a Vice President of Martin and the custodian of that corporation's audio-visual equipment.

* * *

12. The plaintiff is now and has been for over twenty-five years a member of the Democratic Party and a member of the "liberal" wing of that party. She has at all such times been opposed to racial discrimination, and in favor of public housing for low income families, in favor of conservation of natural resources and their development for the use and benefit of all the people, regardless of their income or economic status.

13. In her occupation as a free-lance writer, the plaintiff has for more than five years devoted her writing to matters concerning conservation and the environment, expressing the viewpoints set forth above, for which she has become well and widely known.

* * *

FIRST CAUSE OF ACTION

15. Martin, Weinberg, Berger and Yottes were engaged in a venture called "Tarrygreen" to develop and build a high-rise condominium-shopping center-commercial campus upon a certain tract of land in the Town of Greenburgh, Westchester County, New York.

16. On Sunday, December 17, 1972 Broadcasting through its station WINS broadcast a purported review, allegedly by Jeffers, of a book written by plaintiff, entitled Property Power How To Keep The Bulldozer, The Power Line And The Highwaymen Away From Your Door, (herein called the "book") a copy of which broadcast, purported review is annexed hereto, and made a part hereof as Exhibit A.

17. The plaintiff's book had been published in June 1972, six months before said broadcast, but on or about Wednesday, December 13, 1972, in the week prior to the WINS broadcast of Sunday, December 17, 1972, the book had been cited and quoted at a public meeting by opponents of the Tarrygreen high-rise condominium venture undertaken by Martin, Weinberg, Berger and Yottes as evidence why Tarrygreen was undesirable.

18. In the broadcast of the purported book review Jeffers, willfully, deliberately and intentionally distorted the title of the book for the purpose of misrepresenting its true nature, character and content to the detriment of the plaintiff, her reputation, occupation and livelihood by referring to it solely as "Property Power" thereby omitting the full and complete title.

19. Further in the said purported review Jeffers made the following statements relating to the plaintiff's book:

> "Her book is Property Power. It amounts to a handbook on how to keep others out. * * * The battle cry seems to be "keep the others out." People become secondary to trees and space . . . especially if the people are newcomers. Property Power denounces progress even if it means decent livable homes for people. Property Power says the rose covered cottage in the country is okay for those who got there first but must be off-limits to those who now would like to breathe some of that fresh air. * * * What bothers me about Property Power is the seeming hypocrisy of it. On one hand the author writes, "most of us simply want to live on the land." Then she proceeds to write a book telling how to keep "most of us" from doing so."

20. The foregoing statements and the purported "review" as a whole are false, untrue and without foundation in or relation to any statements appearing in the plaintiff's book.

21. On or about December 20, 1972, the defendants acting in collusion, cooperation, consort and connivance with Martin, Weinberg, Berger and Yottes, formulated, composed, put in writing

and distributed or caused to be distributed publicly what they alleged to be a printed reproduction of the aforesaid broadcast of December 17, 1972 by Jeffers, a copy of which printed reproduction is annexed hereto and made a part hereof as Exhibit B.

22. The said printed reproduction contained the same false and defamatory statements hereinabove alleged and set forth.

23. Appended to this same alleged printed reproduction and made a part of it under the heading "Ms. Guitar quotes:" were four sentences that the defendants, acting in collusion, cooperation, consort and connivance with Martin, Weinberg, Berger and Yottes formulated, composed, put in writing and distributed or caused to be publicly distributed, as follows:

[a] "My role is to make you feel less guilty about wanting to preserve your wooded boundaries and keep all newcomers out at all costs."

[b] "City people should be made to stay in the city."

[c] "The City should not be robbed of its livelihood by enticing industry to the suburbs."

[d] "I would be happy to throw sand in the wheels of progress."

24. By the aforesaid the defendants acting in collusion, cooperation, consort and connivance with Martin, Weinberg, Berger and Yottes intended to imply, impute and create the false and untrue impression that sentences [a] through [d] were quotations of actual remarks and statements by plaintiff whereas in truth and in fact, they had been willfully, maliciously and wrongfully

concocted, fabricated, manufactured and invented by the defendants acting in collusion, cooperation, consort and connivance with Martin, Weinberg, Berger and Yottes for the purpose of misrepresenting and distorting the plaintiff and the content of her book.

25. In truth and in fact, the plaintiff had at no time ever made any remarks, allegations or statements expressly or in intent as attributed to the plaintiff by the said defendants acting in collusion, cooperation, consort and connivance with Martin, Weinberg, Berger and Yottes, as aforesaid, nor has the plaintiff ever made any averment of statements in the sense or effect of the sentences labeled [a], [b], or [d] above, and the attribution of such quotations and the thoughts expressed in them to the plaintiff is false and untrue, but contrary to the apparent belief of the said defendants, plaintiff does believe and publicly and actively advocates that the cities should not be destroyed and deprived of their revenues and livelihoods through the enticement of industry to the suburbs by special subsidies, concessions and inducements.

26. The publication and distribution of the alleged printed reproduction of the review of plaintiff's book by the said defendants acting in collusion, cooperation, consort and connivance with Martin, Weinberg, Berger and Yottes, were deliberate, willful, intentional and malicious and were done by the said defendants with the purpose and intent, not of informing the public of the true content of plaintiff's book, of plaintiff's true views nor of imparting true and bona fide comment and criti-

cism of the book, but wholly and entirely with the purpose and intent of maliciously discrediting and defaming the plaintiff, injuring her in her occupation and livelihood and holding her up to public shame, contempt, contumely and ridicule for the sole and entire purpose of advancing the pecuniary and financial interests of Martin, Weinberg, Berger and Yottes in their desire to develop and build the Tarrytown high-rise condominium complex in the town of Greenburgh, Westchester County, New York; and the said publication did so injure plaintiff.

* * *

SECOND CAUSE OF ACTION

* * *

29. The plaintiff's book was published in June of 1972, and it is not the custom and practice to review a book for a general audience six months after publication as Jeffers did, unless by some special event or circumstance, the book has otherwise been placed before the public at such a time, which was not the case with the plaintiff's book. A book that is six months old and not before the public by reason of some special event or circumstance is not news.

30. The purported "review" was made and publicly broadcast by Jeffers and Broadcasting through and with the planning, programming and connivance by Jeffers with Yottes and other employees, editors, technicians and announcers of Broadcasting, unknown by name to the plaintiff, for and on behalf of Broad-

casting and at its instance and behest.

31. The purported "review" by Jeffers was made willfully, deliberately and maliciously, not for the purpose of reviewing the plaintiff's book, but for the purpose of defaming and discrediting the plaintiff personally, injuring her in her occupation and livelihood, and holding her up to shame, contempt, contumely and ridicule, and the publication of the "review" did so injure and damage plaintiff.

32. The radio broadcast publication of the purported book review by Jeffers on Sunday, December 17, 1972 and its publication and distribution by the defendants acting in collusion, cooperation, consort and connivance with Martin, Weinberg, Berger and Yottes, on Wednesday, December 20, 1972 in printed form as a part and component of a larger and more extensive printed publication was the result of conspiracy, collusion and connivance between and among the defendants with the complicity, assistance, participation and consent of Martin, Weinberg, Berger, Yottes, Westinghouse Electric, Broadcasting, and Jeffers for the purpose of maliciously discrediting, defaming and injuring the plaintiff in her reputation and livelihood by holding her up and exposing her to shame, contempt, contumely and ridicule for the purpose of advancing and promoting pecuniary and financial self-interest of Martin, Weinberg, Berger, Yottes and Jeffers for their joint and several gain and profit; and by reason of said acts plaintiff was so injured.

33. The acts and publications in this second cause of action alleged constitutes a conspiracy to violate and violations of title 47 United States Code §§ 317, 501, 502, 503 and 508.

34. By reason of all of the foregoing the plaintiff has been injured in the amount of two million dollars.

WHEREFORE, plaintiff demands judgment against the defendants in the amount of two million dollars compensatory damages and three million dollars punitive damages together with the costs and expenses of this action.

Plaintiff demands trial by jury.

Windels, Merritt & Ingraham
Attorneys for Plaintiff
Office and P. O. Address
40 Wall Street
New York, New York 10005
(212) 944 0960

By s/Andrew N. Grass, Jr.
A Partner

ANSWER IN 73 CIV. 5287

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

(SAME TITLE)

----------x

Defendants, MARGARET SCHNEIDER, sued herein as MARGARET MIGLIORE, and GERALD DAVID LLOYD, by their attorneys MITCHELL, MINA & MADISON, answering the complaint of the plaintiff herein upon information and belief:

1. Deny each and every allegation contained in paragraph 14 thereof.

2. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 1, 2, 3, 4, 7, 12, and 13 thereof.

3. Admits that Robert Martin Corporation (herein "Martin") was and is a New York corporation having its office at 101 Executive Boulevard, Elmsford, New York.

4. Admits that defendants, MARGARET MIGLIORE and GERALD DAVID LLOYD, were and are now residents of the State of New York.

5. Deny each and every allegation contained in paragraph 6 except admits that Robert Weinberg and Martin Berger are a director and officer of "Martin".

ANSWER IN 73 CIV. 5287

6. Deny each and every allegation contained in paragraph 8 except admits that Yottes was hired as an independent contractor for purposes of public relations man by "Martin".

7. Deny each and every allegation contained in paragraph 10 except admits that defendant Migliore was the personal secretary of Berger and Weinberg and defendant Lloyd was Vice President of "Martin".

8. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 except admits that each of the defendants is a citizen of New York State.

ANSWERING THE FIRST CAUSE OF ACTION

9. Deny each and every allegation contained in paragraphs 15, 21, 22, 23, 24, 25, 26, and 27 thereof.

10. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 16, 17, 18, 19, and 20 thereof.

ANSWERING THE SECOND CAUSE OF ACTION

11. Defendant repeats and reiterates each and every answer contained in paragraphs 1 through 26 hereof.

12. Deny each and every allegation contained in paragraphs 31, 32, 33, and 34 thereof.

ANSWER IN 73 CIV. 5287

13. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 29, and 30 thereof.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE TO THE FIRST AND SECOND CAUSES OF ACTION THE DEFENDANTS STATE:

That the plaintiff's action is barred by the Statute of Limitations.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE TO THE FIRST AND SECOND CAUSES OF ACTION THE DEFENDANTS STATE:

That the complaint fails to state a cause of action against these defendants.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE TO THE FIRST AND SECOND CAUSES OF ACTION THE DEFENDANTS STATE:

That there is presently pending in the United States District Court for the Southern District of New York another action by the same plaintiff based on the same facts alleged in this complaint against, among others, the corporation by whom the two defendants in this action are employed.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE TO THE FIRST AND SECOND CAUSES OF ACTION THE DEFENDANTS STATE:

That statements, if any, made by these defendants regarding the plaintiff's book, or the contents thereof, were true.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE TO THE FIRST AND SECOND CAUSES OF ACTION THE DEFENDANTS STATE:

That even if any of the facts alleged by the plaintiff regarding the contents of the statements allegedly made by the defendants are true, the defendants have a qualified privilege.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE TO THE FIRST AND SECOND CAUSES OF ACTION THE DEFENDANTS STATE:

That the plaintiff, by authoring the book in question, has invited criticism, reviews, and appraisals.

WHEREFORE, defendants, MARGARET SCHNEIDER, sued herein as MARGARET MIGLIORE and GERALD DAVID LLOYD demand judgment dismissing the plaintiff's complaint, together with with the costs and disbursements of this action.

Dated: New York, New York
January 17, 1974

MITCHELL, MINA & MADISON
Attorneys for Defendants
MARGARET MIGLIORE AND
GERALD DAVID LLOYD
127 John Street
New York, New York 10038
(212) 344-5333

NOTICE OF MOTION OF DEFENDANTS WESTINGHOUSE ELECTRIC, WESTINGHOUSE BROADCASTING AND H. PAUL JEFFERS FOR SUMMARY JUDGMENT

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

MARY ANNE GUITAR, Plaintiff,	:	
-against-	:	73 CIV. 161 RLC
WESTINGHOUSE ELECTRIC CORPORATION, WESTINGHOUSE BROADCASTING CO., INC. (DEL.), H. PAUL JEFFERS, ROBERT WEINBERG, ROBERT MARTIN CORPORATION, MARTIN BERGER, JOHN YOTTES, MARGARET MIGLIORE SCHNEIDER, and GERALD DAVID LLOYD, Defendants.	:	NOTICE OF MOTION

PLEASE TAKE NOTICE that, in this consolidated action, upon the second amended complaint in 73 Civ. 161, the answer of Westinghouse Electric Corporation, Westinghouse Broadcasting Co., Inc. (Del.) and H. Paul Jeffers and the complaint in 73 Civ. 5289 together with the annexed statement pursuant to Rule 9(g) of this Court, the annexed affidavit of John J. Macchia, sworn to on the 23rd day of September, 1974, the annexed affidavit of H. Paul Jeffers, sworn to on the 17th day of September, 1974, the annexed affidavit of Robert W. Dickey, sworn to on the 13th day of September, 1974, and the annexed affidavit of M. Thomas Murray, sworn to on the 19th day of September, 1974, and all prior proceedings heretofore had herein, defendants Westinghouse Electric

NOTICE OF MOTION OF DEFENDANTS WESTINGHOUSE ELECTRIC, WESTINGHOUSE BROADCASTING AND H. PAUL JEFFERS FOR SUMMARY JUDGMENT

Corporation, Westinghouse Broadcasting Co., Inc. (Del.) and H. Paul Jeffers will move this court on October 4, 1974, at 10:00 A.M. in Courtroom 1105 before the Honorable Robert L. Carter, in the United States Courthouse for the Southern District of New York, Foley Square, N.Y. or as soon thereafter as counsel may be heard, for an order pursuant to Rule 56(b) of the Federal Rules of Civil Procedure dismissing the second amended complaint as to the defendants Westinghouse Electric Corporation, Westinghouse Broadcasting Co., Inc. (Del.) and H. Paul Jeffers on the ground that there is no genuine issue as to any material fact and that said defendants are entitled to judgment as a matter of law, with costs and disbursements.

PLEASE TAKE FURTHER NOTICE that pursuant to the rules of this Court, answering papers, if any are required to be served on the undersigned at least three (3) days before the return date of this motion.

Dated: New York, New York
September 23, 1974

Yours, etc.

TOWNLEY, UPDIKE, CARTER & RODGERS

By _____
A Member of the Firm
Attorneys for Defendants
Westinghouse Electric Corporation
Westinghouse Broadcasting Co.,
Inc. (Del.) and H. Paul Jeffers
220 East 42nd Street
New York, New York 10017

NOTICE OF MOTION OF DEFENDANTS WESTINGHOUSE ELECTRIC, WESTINGHOUSE BROADCASTING AND H. PAUL JEFFERS FOR SUMMARY JUDGMENT

TO: WINDELS & MARX
Attorneys for Plaintiff
51 West 51st Street
New York, N.Y. 10019

NICHOLAS A. D'ONOFRIO
Attorney for Defendants
Robert Martin Corporation,
Robert Weinberg and
Martin Berger
123 William Street
New York, N.Y. 10038

VINCENT F. CERCHIARA, ESQ.
Cerchiara & Cerchiara
Attorneys for Defendant
John Yottes
145 Mt. Vernon Avenue
Mount Vernon, N.Y. 10450

F. V. MINA, ESQ.
Attorney for Defendants
Margaret Migliore Schneider
and Gerald David Lloyd
127 John Street
New York, N.Y. 10038

STATEMENT PURSUANT TO RULE 9 (g)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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(SAME TITLE)

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Defendants Westinghouse Electric Corporation (herein "Electric"), Westinghouse Broadcasting Co., Inc. (Del.) (herein "Broadcasting"), and H. Paul Jeffers (herein "Jeffers"), for their statement pursuant to Rule 9(g) of the General Rules of this Court, contend that with respect to each of the following material facts, there is no genuine issue to be tried:

1. Defendant Broadcasting is a Delaware corporation and a wholly owned subsidiary of Westinghouse Broadcasting Co., Inc. (Ind.), an Indiana corporation, which in turn is a wholly owned subsidiary of defendant Electric, a Pennsylvania corporation.

2. Defendant Broadcasting is the owner and licensee of radio station WINS in New York.

3. Defendant Jeffers was employed by defendant Broadcasting on a regular basis from June, 1969 to January, 1973, and, as part of his employment, reviewed books for broadcast on WINS.

4. On December 17, 1972, a book review by defendant Jeffers of the plaintiff's book, Property Power, was broadcast over radio station WINS.

STATEMENT PURSUANT TO RULE 9 (g)

5. The review deals with a published literary work concerning a matter of public interest.

6. Said review is based upon the plaintiff's book, Property Power.

7. Said review consists of Jeffers' comments and opinion as a literary critic.

Dated: New York, New York

Yours, etc.

TOWNLEY, UPDIKE, CARTER & RODGERS

By _____
A Member of the Firm
Attorneys for Defendants
Electric, Broadcasting and
Jeffers
220 East 42nd Street
New York, New York 10017

AFFIDAVIT OF JOHN J. MACCHIA, ESQ., FOR DEFENDANTS WESTINGHOUSE ELECTRIC, WESTINGHOUSE BROADCASTING AND JEFFERS, IN SUPPORT OF MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

(SAME TITLE)

----------x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

JOHN J. MACCHIA, ESQ., being duly sworn, deposes and says:

1. I am an attorney, admitted to practice in this Court, and a member of the firm of Townley, Updike, Carter & Rodgers, attorneys for the defendants Westinghouse Electric Corporation (herein "Electric"), Westinghouse Broadcasting Co., Inc., (Del.), (herein "Broadcasting") and H. Paul Jeffers, (herein "Jeffers"). The moving defendants are hereinafter referred to as "defendants herein". I am familiar with the proceedings herein.

2. This affidavit is made in support of a motion by the defendants herein for summary judgment dismissing the second amended complaint on the ground that there are no genuine issues of material fact and that defendants herein are entitled to judgment as a matter of law.

AFFIDAVIT OF JOHN J. MACCHIA, ESQ., FOR DEFENDANTS WESTINGHOUSE ELECTRIC, WESTINGHOUSE BROADCASTING AND JEFFERS, IN SUPPORT OF MOTION

3. Plaintiff commenced this action in January 1973 for defamation and a conspiracy to violate the Communications Act. The complaint (73 Civ. 161) as amended (Exhibit A attached), was brought against all of the defendants with the exception of defendants Lloyd and Schneider. Plaintiff commenced a separate action against the latter two defendants in December, 1973 (73 Civ. 5287)(Exhibit B attached). This action was consolidated with the principal action for all purposes by order of the Court dated April 15, 1974.

The Pleadings

4. In the principal action (second amended complaint), the plaintiff alleges:

(a) a claim for defamation (second cause of action) against the defendants herein and defendant John Yottes alleging that the broadcast of a book review of the plaintiff's book, Property Power, by H. Paul Jeffers over radio station WINS on December 17, 1972 defamed her;

(b) a claim for defamation (first cause of action) against defendants Robert Martin Corporation, Robert Weinberg, Martin Berger and John Yottes alleging that on or about December 20, 1972, a publication of a printed reproduction of the broadcast along with four statements attributed

to the plaintiff, defamed her and was done for the purpose of advancing the financial interests of said defendants in the development of a tract of land in Westchester County; and

(c) a claim against all of the defendants (third cause of action) alleging a conspiracy to violate certain sections of the Communications Act of 1934, as amended, i.e., 47 U.S.C. § 317, 501, 502, 503 and 508.

The defendants herein in their answer (Exhibit C attached) have admitted the publication of Jeffers' book review over station WINS; generally denied the material allegations of the second amended complaint and pleaded affirmative defenses of failure to state a claim, fair comment and constitutional privilege.

5. The second action which has been consolidated with the principal action asserts two causes of action against defendants Lloyd and Schneider, employees of defendant Robert Martin Corporation alleging defamation for the printed reproduction of the book review and conspiracy to violate the Communications Act of 1934.

Parties and Background

6. Defendant Broadcasting owns and is the licensee

of radio station WINS in New York City. It is a wholly owned subsidiary of Westinghouse Broadcasting Co., Inc. (Ind.) an Indiana corporation which in turn is a wholly owned subsidiary of defendant Electric. Defendant Jeffers at the time of the broadcast was a full time news editor employed by radio station WINS and had been so employed since June 1, 1969. Defendant Yottes was a some time casual employee at WINS prior to December 3, 1972 and subsequent to February 2, 1973. He was not employed in any capacity by WINS at the times alleged in the claims herein.

7. Defendant Robert Martin Corporation is a real estate developer and a New York corporation with its office in Elmsford, New York engaged in the construction and development of a project known as Tarrygreen. Defendant Martin Berger is its President; defendant Robert Weinberg is its Chairman of the Board; defendant Gerald David Lloyd (in the second action) is its vice president; and defendant Margaret Migliore Schneider (in the second action) is its employee.

8. On Sunday, December 17, 1972 defendant Broadcasting, over its radio station WINS, broadcast as part of its regular news features of public interest a review by H. Paul Jeffers of a book written by the plaintiff entitled Property Power. (A copy of the review is set forth as Exhibit

D attached, except for capitalization and punctuation; the book, Property Power, is attached as Exhibit E.) A printed reproduction of the review which also contained certain "quotes" attributed to the plaintiff was distributed on December 20, 1972 by defendant Robert Martin Corporation along with certain other material pertinent to the promotion of its project in Westchester County known as Tarrygreen. Plaintiff claims that these two publications are defamatory of her. In addition, she claims these publications were the result of a conspiracy to violate certain penal provisions of the Communications Act of 1934.

9. In October, 1971, defendant Jeffers began to review books for Broadcasting as a part of his employment. Before the review of Property Power, he had broadcast 60 book reviews over WINS as part of the station's news features. Jeffers was recognized at the station as a competent author and literary critic. Prior to the broadcast at issue Jeffers had written eight books and produced several long playing records.

10. Property Power, according to the second amended complaint, was published by Doubleday in June, 1972. The book is subtitled, "How to Keep the Bulldozer, the Power Line, and the Highwaymen Away From Your Door."

11. On December 15, 1972, Jeffers read a front page

article in the December 16th early edition of the New York Times entitled: "New England Resists Land Development Pressures" written by Bill Kovach (Exhibit F attached) Upon reading the article, Jeffers alone decided that a review of Property Power would be pertinent and timely. Jeffers prepared a review of Property Power and recorded it on tape at station WINS on December 16, 1972. The review was broadcast on the following day.

The Contentions of Defendants Herein

12. The defendants herein contend:

(a) that with respect to the defamation claim this claim should be dismissed for any one of the following reasons:

(i) the publication of defendants herein is not libelous and is not actionable;

(ii) the publication is a critical review and comment concerning a book written and published by plaintiff and is privileged;

(iii) to hold the publication to be actionable, would disregard the constitutional privilege conferred on defendants herein.

(b) that with respect to the claim for alleged violations of the Communications Act of 1934, the claim should be dismissed on the ground that no private right of action exists for alleged violations of the Act.

13. Stated in simplest terms, the plaintiff seeks damages for the broadcast of an allegedly defamatory book review that is not defamatory.

14. It is for the Court to decide in the first instance whether the review is defamatory of plaintiff; if it is not, the defendants are entitled to judgment as a matter of law. The publication in question which runs for a little over two minutes consists of literary comments on plaintiff's book. It was broadcast as part of WINS news features of public interest. Such reviews are commonplace and a necessary ocurrence in a free society. The comments were fair as a reading of the book and the review clearly shows, but even if they weren't there is nothing in the review which defames the plaintiff. In fact, the plaintiff is mentioned only in the context of her authorship of the book. Aside from this incidental reference to the author, the book, Property Power, is the subject of the review, not the plaintiff.

15. The gossamer quality of plaintiff's defamation claim herein is highlighted by the specific allegations asserted by plaintiff. For example, plaintiff claims the book's title was distorted because the reviewer did not mention the sub-title. In addition, she claims that it is not the custom or practice to review a book six months beyond the publication

date and that a reference to the New York Times article was an illegitimate pretext for the review. To bolster those tenuous claims, plaintiff makes the bald and conclusory allegation that the review was the result of connivance and conspiracy among the defendants. Even if there were any proof of such incredulous claims in this case, it cannot make a non-defamatory book review actionable.

16. In any event the reviewer did not distort the title of plaintiff's book. The book's title is Property Power; the subtitle is: "How to Keep the Bulldozer, the Power Line and the Highwaymen Away From Your Door". The book was reviewed some months after publication. Surely, there is nothing sinister in this. Reference to the New York Times article was unquestionably proper as appears from the face of the article entitled: "New England Resists Land Development Pressures". Defendant Yottes, who was not employed by radio station WINS for some time prior to and some time after the review was prepared, recorded and broadcast, did not participate in any respect in the broadcast of Jeffers' review as appears from the extensive depositions taken by plaintiff of all defendants.

17. In sum, the Court should dismiss the claim of defamation on the ground that the broadcast of the book review of defendant Jeffers is non-defamatory on its face and therefore, the questions of privilege which are so apparent in this

case need not even be reached. If these questions are reached by the Court, it is equally clear that the defendants are entitled to judgment as a matter of law in view of the well-established privilege of fair comment and the constitutional privilege under the First Amendment.

18. When the plaintiff submitted her book to the public, she necessarily invited the critical comments received. The courts have always permitted a critic great latitude in this area; otherwise, the privilege would cease to exist. Despite plaintiff's ambitious discovery program in this case which has been oppressive, burdensome, expensive and time consuming for all defendants, she has totally failed to satisfy her burden to make an affirmative showing of evidentiary facts to support her claims. The courts have consistently held that failure to meet this burden requires an award of summary judgment to the defendants. Indeed, the courts have consistently held that summary judgment is most appropriate when the expense of defense in these cases alone would have a chilling effect on First Amendment rights.

19. With respect to plaintiff's claim of a conspiracy to violate Sections 317, 501, 502, 503 and 508 of the Communications Act of 1934, the short answer is that this Court is not the proper forum for such a claim. The sections cited by plain-

tiff have no relevance to this suit in any case. They include penalties for a radio station's failure to make certain announcements or to disclose payments to certain persons for broadcasting material, enforceable by the government in a criminal action or by the Federal Communications Commission. Clearly, the Act gives no private right of action which is cognizable in the first instance by the federal courts. The F.C.C. has the primary and exclusive jurisdiction over private actions under the Act and this Court will not exercise its jurisdiction over such claims. Moreover, there is no cause of action for civil conspiracy as such, as shown in the memorandum of law submitted herewith. Aside from the jurisdictional deficiency of these claims we stress the point that despite lengthy, burdensome and harassing discovery by plaintiff since the commencement of these actions, she has shown no evidence of the conspiracy alleged. The conclusion is inescapable that this count based on pure speculation and surmise was alleged for its possible in terrorem effect. If so, it misses the mark as a matter of law and fact.

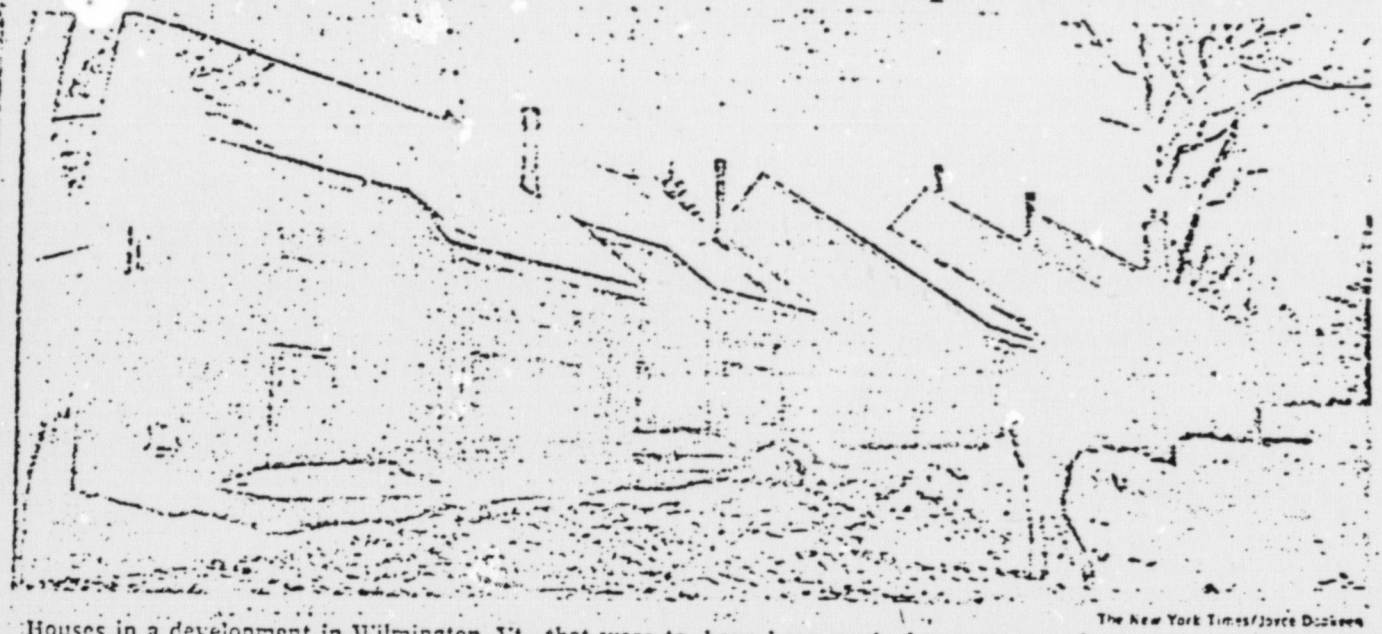
20. There being no genuine issue of material fact for trial with respect to any of the claims asserted against the defendants herein, said defendants are entitled to summary judgment dismissing the second amended complaint as a matter of law, with costs and disbursements.

JOHN J. MACCHIA

Verified September 23, 1974

EXHIBIT F TO MACCHIA AFFIDAVIT - ARTICLE APPEARING IN DECEMBER 16, 1972 EDITION OF NEW YORK TIMES

New England Resists Land Development Pressures



The New York Times/Joyce Dopkeen

Houses in a development in Wilmington, Vt., that were to have been ready for occupancy last year remain empty. Difficulties with sewerage are among the problems in the community, as at some other places in New England.

By BILL KOVACH
Special to The New York Times

MONTPELIER, Vt., Dec. 15 —That "little place in the country" may become a fading dream for many urban residents because of reaction to the explosive pressures for land development in the upper New England states.

For several years now, with increased leisure time and ease of access provided by the interstate highway system, rustic New England farms and rough backwoods areas have been divided and subdivided into rural retreats.

But, on the state and local level, a reaction that promises to severely limit the continued development of the land is setting in.

A growing demand for land and building sites in Vermont is leading toward a confrontation between the traditional concept of private property and the need for controlled development.

The 1973 Vermont Legislature will be asked to consider a major new program of land control that includes a statewide assessment of the land's ability to carry development and a land-use plan that would designate areas for specific kinds of development.

Public hearings on the proposals have already generated violent opposition from large land holders and real estate interests, and the plan is expected to be one of the most controversial pieces of legislation ever considered by the state.

William S. Cowles Jr., Ver-

Continued on Page 25, Column 1

Since 1960 the use of mobile homes in the state has grown from 1,200 units to more than 15,000 today, and most of them are clustered in parks on the edges of towns and villages of the southern part of the state. Efforts are under way by some members of the Legislature to draft a model law on the use and location of mobile homes for the state.

While the other states deal with residential and recreational development pressure, Maine is still contending with industrial development. Organized citizen groups and the state's laws on industrial site selection have blocked several recent attempts to develop oil refinery operations along the Maine seacoast.

Oil interests have indicated a continuing interest, and most observers believe that a major effort will be made in the Legislature to sharply reduce the state's control of industrial development and ease the environmental protection laws.

The increased pressure on Vermont land dates to the opening of Expo in Montreal in 1967, according to Donald Webster, director of the state's Division of Environmental Protection.

"The interstate highway through Vermont was a major artery from the northeast to the exposition," Mr. Webster said in a recent interview. "It brought thousands of people through the northern underdeveloped part of our state, and you could see the results. Land that sold for $100 an acre then is now selling for $500 an acre and more.

"It's a developable lot

[illegible]ont's Secretary of Human Services, whose department developed the proposed legislation, says the controls are necessary to ease the pressure for development.

"There is," Mr. Cowles said, "a generalized pressure on all of upper New England—the underdeveloped countries if you will. We want to develop but not as fast as we have been and not in the way we have been."

Although Vermont's growing pains have been most acute—and the state's reaction more rapid—there appears to be a general trend toward growth control in the New England states as pressure for industrial, recreational and residential development builds.

In eastern Massachusetts there has been a growing trend by local governments to slow down or arrest growth that is tending to destroy the rural flavor of their communities. In the last few years a half dozen towns have placed tight restrictions on building permits, and some have imposed a ban on multifamily constuction in the face of a spreading pattern of suburban and rural apartment building.

The town of Mymouth — experiencing a population growth from 5,000 to 22,000 in the last two years — recently enacted zoning regulations designed to "retain the rural character of the town" and will soon consider a two-year moratorium on all building.

New Hampshire planners are faced with a different problem. It is one of the few New England states that has little control over mobile homes, and pressure is growing to limit the use of house trailers.

land brings as much as $2,000 now. In the face of this kind of pressure—the number and acreage of land sales this year is up 46 per cent over 1971—there is almost no local control. Of the 246 communities in the state, only 25 have zoning and subdivision controls."

The trend exploded this year, largely because of the debate over land use generated by the election for Governor. Governor-elect Thomas Salmon, a Democrat, discussed land use at some length in his race, pointing out loopholes in the laws and proposing to tax capital gains on short-term land sales to finance a general property tax reform program.

The result was an avalanche of land sales designed both to take advantage of the loopholes and to avoid any new tax.

As Mr. Cowles described the situation: "Our present law controlling subdivision deals with only parcels of land 10 acres or less, and it recently came to our attention that large amounts of land, subdivided into parcels over 10 acres, were being sold off and then subdivided again to avoid the regulations."

16 Auctions Scheduled

During the last four months, in fact, 13 such sales were held, selling land to the tune of 3,000 to 4,000 acres in a single day. In addition, there was evidence that much of the land could not handle sewage and had inadequate water supplies for residential development.

[illegible] similar auctions were already scheduled before [illegible]. As a result, emergency regulations went into effect last month based on public laws to halt further sales.

"If we didn't move," Mr. Cowles said, "there would have been a landslide."

Landowners and real estate interests, led by those in the nearly empty northeastern part of the state (an area of 2,000 square miles with a population of less than 50,000 people) reacted immediately. Organizing themselves into a Northeast Kingdom Landowners Steering Committee, the landowners began closing their land to hunters, trappers and others hoping to bring pressure on the government to withdraw controls.

George Farrington, chairman of the committee, argued that it should be the responsibility of the developer or buyer and not the seller to deal with land use controls.

"It's getting to the point where the Vermont property owner has only two rights left, to pay his taxes and post his land," Mr. Farrington said. "If we are prevented from enjoying the historic rights associated with private property ownership, then we will exercise the right we have left to us—to protect our land."

The organization says it has closed 80,000 acres against outside use, but the action has failed to generate the public outcry that was hoped for.

In the meantime, the state refined the new land-use con- [illegible] hearings held across the state [illegible] developing opposition. One critic bitterly labeled the effort to direct control "Satan's plan" and one that would "give power beyond the wildest dreams of Hitler, Caesar and Genghis Khan."

A strong sentiment, however, has built up in the state over the years toward control of land development, and many observers believe if any state can enact statewide land-use and zoning controls, Vermont is that state. Both the outgoing Republican Governor, Deane C. Davis, and Mr. Salmon favor such controls.

And the Legislature contains land-use control advocates like Representative Marshal Witten of Bennington, a Republican, who is calling for an entirely new concept of land ownership.

Speaking at a recent conference on the environment at the University of Massachusetts at Amherst, Mr. Witten urged an end to current notions of private land ownership. The problem of freedom in such matters as population distribution, Mr. Witten argued, is that, "it says to people who have made a mess of places like Boston and New York they can come to Vermont and bring their mess with them."

Government, he added, needs strong land-use policies that allow it to decide the location and kind of development that occurs.

"We should," he concluded, "talk about the concept of holding land rather than owning land."

EXHIBIT F TO MACCHIA AFFIDAVIT - ARTICLE APPEARING IN DECEMBER 16, 1972 EDITION OF NEW YORK TIMES

AFFIDAVIT OF H. PAUL JEFFERS, A DEFENDANT, IN SUPPORT OF MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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(SAME TITLE)

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STATE OF NEW YORK)
: ss.:
COUNTY OF ONONDAGA)

H. PAUL JEFFERS, having been duly sworn, deposes and says:

1. I am a defendant in this action and make this affidavit in support of the motion herein for summary judgment dismissing the second amended complaint. From June 1, 1969 until January 13, 1973, I was employed on a regular basis by Westinghouse Broadcasting Co., Inc. (Del.) as a news editor for radio station WINS. Upon leaving WINS, I was employed by WNYS-TV in Syracuse, New York, working as a television news producer and a reviewer of the arts on the air for WNYS-TV. I resigned from WNYS-TV effective August 31, 1974 and have since been employed as an Assistant Professor at the S. I. Newhouse School of Communications, Syracuse University, teaching Criticism in the Public Arts and Radio and Television writing.

2. In October, 1971, I started reviewing books as part of my work for radio station WINS and during the course of

my employment, 61 book reviews which I had prepared were broadcast over WINS as news features from October, 1971 through December 17, 1972. Prior to that time, I was the author of the following books:

(a) Gallant Men

(b) Gallant Women

(c) The CIA

(d) His Own Man

(e) How the U.S. Senate Works

(f) Wanted by the F.B.I.

(g) See Parris and Die (with Dick Levitan)

(h) Sex in the Executive Suite (with Dick Levitan)

3. In the fall of 1972 I read Property Power, written by Mary Anne Guitar. On December 15, 1972, in the next day's issue of the New York Times, I read a front page article written by Bill Kovach entitled "New England Resists Land Development Pressures". After reading the article I decided that a review of Property Power would be pertinent and timely. I typed my review at home and taped it on December 16, 1972 at the WINS studios. The tape was broadcast on the following day. The review ran for two minutes and six seconds and is set forth as Exhibit A to the second amended complaint, except for capitalization and punctuation. I received a $20 talent fee from WINS for the review and received no other payments or consideration from anyone else.

AFFIDAVIT OF H. PAUL JEFFERS, A DEFENDANT,
IN SUPPORT OF MOTION

4. My review of Property Power was based entirely upon the book. I have never met Miss Guitar nor spoken with her and I bear her no ill will. Statements in the review which relate to the plaintiff herself are based upon the book and its jacket. The review consists of my comments and honest opinion of the book as a literary critic.

5. With respect to plaintiff's claim of a conspiracy to violate the Communications Act, I am informed by my attorneys that no private right of action exists under the Act. In any event, I alone selected Property Power to review and I alone prepared the review which was broadcast. I did not discuss my selection of this book with any one prior to preparing my review. Defendant John Yottes did not participate in any manner in the selection, preparation or broadcast of my review. I have no knowledge of the defendants Robert Weinberg, Robert Martin Corporation, Martin Berger, Margaret Migliore Schneider or Gerald David Lloyd, nor do I have any knowledge of a development known as Tarrygreen. I had no dealings of any kind with any of these defendants or defendant Yottes with respect to any of the matters alleged in the second amended complaint.

H. Paul Jeffers

Verified September 17, 1974

AFFIDAVIT OF ROBERT W. DICKEY, FOR DEFENDANT
WESTINGHOUSE BROADCASTING, IN SUPPORT OF MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

(SAME TITLE)

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STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

ROBERT W. DICKEY, having been duly sworn, deposes and says:

1. I am General Manager of radio station WINS which is owned by defendant Westinghouse Broadcasting Co., Inc. (Del.) (herein "Broadcasting"), the licensee, and I make this affidavit in support of the motion herein for summary judgment dismissing the second amended complaint.

2. As General Manager of radio station WINS, I have the overall administrative responsibility for its operation. The records maintained by radio station WINS show that H. Paul Jeffers was employed by the station as a news editor on a regular basis from June 1, 1969 to January 13, 1973; that Mr. Jeffers started to review books as a news feature on WINS in October, 1971; and that 61 book reviews by H. Paul Jeffers were broadcast by WINS during the period of his employment. Pursuant to an order of this Court, tapes of these 61 reviews were made by WINS and turned

over to plaintiff's attorneys. In addition, numerous documents of WINS concerning these reviews and various matters were searched for and turned over to plaintiff's counsel by our attorneys.

3. The overall decision to broadcast book reviews was made by the management of the station. From that point on, within certain budgetary limitations, Mr. Jeffers reviewed whatever books he selected including the book, Property Power. Mr. Jeffers was recognized at the station as a competent author and book reviewer.

4. With respect to Jeffer's review of Property Power, the WINS records show that the review was recorded by Mr. Jeffers on December 16, 1972; that it ran for two minutes and six seconds; that it was broadcast at least four times during the day on Sunday December 17, 1972; and that Mr. Jeffers was paid a talent fee of $20 for the review. The review, like the others, was broadcast as part of WINS news features of public interest; no consideration was received by Broadcasting for the broadcast of the Property Power review. I did not nor to my knowledge did any other member of WINS management suggest or discuss plaintiff's book as possible review material with Mr. Jeffers.

5. Defendant John Yottes was a sometime casual employee at radio station WINS. The employment records maintained by WINS show that he was not employed at the station from December 3, 1972 to February 2, 1973 and that he had nothing to do with the book review in question. I note that Mr. Yottes was

not a casual employee at the times alleged in the claims herein.

6. I am informed by our attorneys that plaintiff's claim of a conspiracy to violate Sections 317, 501, 502, 503 and 508 of the Communications Act of 1934 cannot be maintained in this Court. In any event, defendant Broadcasting had no dealings of any kind with defendant Yottes nor any of the other defendants named in the first cause of action with respect to any of the matters alleged in the second amended complaint; nor has it any interest in a development known as Tarrygreen which I am informed is one of the projects of the defendant Robert Martin Corporation.

Robert W. Dickey

Verified September 13, 1974

AFFIDAVIT OF M. THOMAS MURRAY, FOR DEFENDANT WESTINGHOUSE ELECTRIC, IN SUPPORT OF MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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(SAME TITLE)

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STATE OF PENNSYLVANIA)
: ss.:
COUNTY OF ALLEGHANY)

M. THOMAS MURRAY, having been duly sworn, deposes and says:

1. I am Assistant General Counsel and Assistant Secretary of Westinghouse Electric Corporation (herein "Electric") and I make this affidavit in support of the motion herein for summary judgment dismissing the second amended complaint. I am not an officer, director or employee of Westinghouse Broadcasting Co., Inc. (Del.) (herein "Broadcasting").

2. Defendant Broadcasting is a Delaware corporation which owns radio station WINS and is licensed by the Federal Communications Commission. It is a wholly owned subsidiary of Westinghouse Broadcasting Co., Inc. (Ind.), an Indiana corporation, which in turn is a wholly owned subsidiary of defendant Electric. It is also part of a group known as Broadcasting, Learning and Leisure Time which is a company-like unit of Electric.

AFFIDAVIT OF M. THOMAS MURRAY, FOR DEFENDANT WESTINGHOUSE ELECTRIC, IN SUPPORT OF MOTION

3. With respect to the review of Property Power, no one at Electric participated in the broadcast of the review which is part of the daily operations of the licensee, defendant Broadcasting, nor does Electric have any documents pertaining to the review itself with the exception of the complaints which have been served on Electric in this litigation.

M. THOMAS MURRAY

Verified September 19, 1974

CROSS NOTICE OF MOTION OF DEFENDANTS ROBERT MARTIN CORPORATION, WEINBERG AND BERGER, JOINING IN FOR DISMISSAL OF ACTION BY SUMMARY JUDGMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

(SAME TITLE)

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PLEASE TAKE NOTICE that in this consolidated action, upon the second amended complaint in 73 Civ. 161, the answer of ROBERT MARTIN CORPORATION, ROBERT WEINBERG and MARTIN BERGER together with the annexed statement pursuant to Rule 9(g) of this Court, the annexed affidavit of NICHOLAS A. D'ONOFRIO, sworn to on the 26th day of September, 1974, the annexed affidavit of ROBERT WEINBERG sworn to on the 27th day of September, 1974, and the annexed affidavit of MARTIN BERGER sworn to on the 27th day of September, 1974, and incorporating herein the exhibits contained in the motion papers submitted by defendant WESTINGHOUSE, and all prior proceedings heretofore had herein, defendants ROBERT MARTIN CORPORATION, ROBERT WEINBERG and MARTIN BERGER will cross-move this Court on October 4, 1974 at 10:00 A.M. in Courtroom 1105 before the Honorable ROBERT L. CARTER, in the United States Courthouse for the Southern District of New York, Foley Square, New York, or as soon thereafter as Counsel may be heard, for an order pursuant to Rule 56(b) of the Federal Rules of Civil Procedure dismissing the second amended complaint as to the defendants ROBERT MARTIN CORPORATION, ROBERT WEINBERG and MARTIN BERGER on the grounds that there is no genuine issue as to any material fact and that said defendants are entitled to judgment as a matter of law, with costs and disbursements.

CROSS NOTICE OF MOTION OF DEFENDANTS ROBERT MARTIN CORPORATION, WEINBERG AND BERGER, JOINING IN FOR DISMISSAL OF ACTION BY SUMMARY JUDGMENT

PLEASE TAKE FURTHER NOTICE that pursuant to the rules of this Court, answering papers, if any, are required to be served on the undersigned at least three (3) days before the return date of this motion.

Dated: New York, New York
September 27th 1974

Yours, etc.,

NICHOLAS A. D'ONOFRIO
Attorney for Defendants
ROBERT MARTIN CORPORATION,
ROBERT WEINBERG & ROBERT BERGER

BY: NICHOLAS A. D'ONOFRIO
A Member of the Firm
123 William Street
New York, New York 10038

To: WINDELS & MARX, ESQS.
Attorneys for Plaintiff
51 West 51st Street
New York, New York 10019

JOHN J. MACCHIA, ESQ.
TOWNLEY, UPDIKE, CARTER & RODGERS
Attorney for Defendants
Westinghouse Electric Corporation,
Westinghouse Broadcasting Co., Inc.
(Del.) and H. Paul Jeffers
220 East 42nd Street
New York, New York 10017

VINCENT F. CERCHIARA, ESQ.
CERCHIARA & CERCHIARA
Attorneys for Defendant
John Yottes
145 Mt. Vernon Avenue
Mount Vernon, New York 10450

CROSS NOTICE OF MOTION OF DEFENDANTS ROBERT MARTIN CORPORATION, WEINBERG AND BERGER, JOINING IN FOR DISMISSAL OF ACTION BY SUMMARY JUDGMENT

F. V. MINA, ESQ.
Attorney for Defendants
Margaret Migliore Schneider
and Gerald David Lloyd
127 John Street
New York, New York 10038

STATEMENT PURSUANT TO RULE 9 (g)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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(SAME TITLE)

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Defendants ROBERT MARTIN CORPORATION, ROBERT WEINBERG and MARTIN BERGER for their statement pursuant to Rule 9 (g) of the General Rules of this Court, contend that with respect to each of the following material facts, there is no genuine issue to be tried:

1. Defendant Robert Martin Corporation is a real estate developer and a New York Corporation with its executive offices in Elmsford, New York engaged in the construction and development of a project known as Tarrygreen. Defendant Martin Berger is its President; defendant Robert Weinberg is its Chairman of the Board; defendant Gerald David Lloyd is its Vice President; and defendant Margaret Migliore Schneider is its employee.

2. Defendant Robert Martin Corporation hired John Yottes and his firm Talent Unlimited, Inc. as an independent contractor to perform Public Relation work and services with respect to the project known as Tarrygreen.

3. On December 17, 1972, a book review by defendant Jeffers of the plaintiff's book, Property Power, was broadcast over radio station WINS.

4. That at a meeting on December 20, 1972 at the Greenburgh Town Hall Robert Martin Corporation distributed a printed copy of Jeffer's taped broadcast - the printed "review" of plaintiffs book -, and which also contained the material on the bottom "Ms. Guitar quotes", and identified in the main moving paper as Exhibit B.

STATEMENT PURSUANT TO RULE 9 (g)

5. Exhibit B consists of Jeffers comments and opinion as a literary critic dealing with a published literary work concerning a matter of public interest printed from a tape made of the broadcast, and the "Ms Guitar quotes" contained thereon come substantially from the book and other statements made by plaintiff in her book or in public statements.

6. Robert Martin Corporation, Robert Weinberg and Martin Berger had no connection, association or control over defendants Westinghouse, H. Paul Jeffers or John Yottes as to and concerning the book review broadcast by Jeffers of the plaintiffs book over WINS on December 17, 1972.

7. Defendant Margaret Migliore Schneider was an employee of Robert Martin Corporation, as a private secretary, to Robert Weinberg and Martin Berger.

8. Defendant Gerald David Lloyd was an employee and officer of Robert Martin Corporation.

Yours etc.,

NICHOLAS A. D'ONOFRIO

BY: NICHOLAS A. D'ONOFRIO
A Member of the Firm
Attorney for defendants
Robert Martin Corporation, Robert
Weinberg and Martin Berger
123 William Street
New York, New York 10038
964-2700

AFFIDAVIT OF NICHOLAS A. D'ONOFRIO, ESQ., FOR DEFENDANTS ROBERT MARTIN CORPORATION, WEINBERG AND BERGER, IN SUPPORT OF CROSS MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

(SAME TITLE)

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STATE OF NEW YORK :
:SS.:
COUNTY OF NEW YORK:

NICHOLAS A. D'ONOFRIO, being duly sworn, deposes and says:

1. I am an attorney, admitted to practice in this Court, and attorney for defendants ROBERT MARTIN CORPORATION, ROBERT WEINBERG and MARTIN BERGER, and I am familiar with the proceedings herein.

2. This affidavit is made in support of a cross-motion by defendants, ROBERT MARTIN CORPORATION, ROBERT WEINBERG and MARTIN BERGER in connection with, and in support of a motion by defendants WESTINGHOUSE and JEFFERS for summary judgment dismissing the second amended complaint on behalf of all the defendants on the ground that there are no genuine issues of material facts and that all defendants are entitled to judgment as a matter of law.

3. That in order to avoid multiple repitition and redundancy, your deponent respectfully prays that this Court will accept and incorporate the papers and exhibits submitted on behalf of defendants, WESTINGHOUSE and JEFFERS to also be used where applicable to the issue concerningplaintiff and the defendants ROBERT MARTIN CORPORATION, ROBERT WEINBERG and MARTIN BERGER as if set forth in full in this cross-motion.

AFFIDAVIT OF NICHOLAS A. D'ONOFRIO, ESQ., FOR DEFENDANTS ROBERT MARTIN CORPORATION, WEINBERG AND BERGER, IN SUPPORT OF CROSS MOTION

4. Defendant ROBERT MARTIN CORPORATION is a real estate developer and a New York Corporation with its office in Elmsford, New York engaged in the construction and development of a project known as Tarrygreen. Defendant MARTIN BERGER is its President; defendant ROBERT WEINBERG is its Chairman of the Board; defendant GERALD DAVID LLOYD is an officer (Vice President) and employee, and defendant MARGARET MIGLIORE SCHNEIDER is its employee (Private Secretary to BERGER and EINBERG).

5. On Sunday, December 17, 1972, defendant Broadcasting over its radio station WINS, on at least two (2) different time periods, broadcast a review by H. PAUL JEFFERS of a book written by the plaintiff entitled Property Power. This broadcast was heard by JOHN YOTTES, an independant contractor hired by ROBERT MARTIN CORPORATION prior to December 17, 1972, to promote the Tarrygreen project with various governmental agencies, neighborhood groups and civic associations in the immediate area concerned over the impact of this large proposed development.

6. That the review was reproduced and printed with the bottom portion "Ms. Guitar quotes:" added and distributed with other material at a public hearing meeting on December 20, 1972 by ROBERT MARTIN CORPORATION as a method of promoting its development project known as Tarrygreen.

7. That the defendants, ROBERT MARTIN CORPORATION, MARTIN BERGER and ROBERT WEINBERG were in no way or manner associated or connected with defendants WESTINGHOUSE or JEFFERS, and that the reproduction of the book review and quotes (Exhibit B), and its distribution, was done independantly of the JEFFERS broadcast.

AFFIDAVIT OF NICHOLAS A. D'ONOFRIO, ESQ., FOR DEFENDANTS ROBERT MARTIN CORPORATION, WEINBERG AND BERGER, IN SUPPORT OF CROSS MOTION

8. That the defendants ROBERT MARTIN CORPORATION, ROBERT WEINBERG and MARTIN BERGER contend that with respect to plaintiff's defamation claims that the publication of this reproduction of the JEFFERS book review is not libelous or actionable, and is a critical review and comment concerning a book written and published by plaintiff and is in no way defamatory to the plaintiff, and the Court, if it decides and agrees, should dismiss this Cause of Action and grant judgment to the defendants.

9. That with respect to plaintiff's claim of conspiracy, after exhaustive depositions and pre-trial discovery, the plaintiff has totally failed to prove her burden to make any affirmative showing of evidentiary facts to support her claims. In fact, all of the evidence adduced this for shows that the defendants were strangers to one another, and that the broadcast of the review and the reproduction, printing and distribution by ROBERT MARTIN CORPORATION of "Exhibit B" was two seperate, independant acts in no way related to each other, and in no way intended to cause harm to plaintiff, and that this cause of action was based on pure speculation and should be dismissed both as a matter of law and of fact, and judgment granted to the defendants.

10. That the plaintiff has failed to prove that she sustained any actual injury or loss of reputation with respect to her standing in the community.

11. That there being no genuine issue of material fact for trial as to the defendants ROBERT MARTIN CORPORATION, ROBERT WEINBERG and MARTIN BERGER with respect to the claim and/or causes of action for conspiracy

AFFIDAVIT OF NICHOLAS A. D'ONOFRIO, ESQ., FOR DEFENDANTS ROBERT MARTIN CORPORATION, WEINBERG AND BERGER, IN SUPPORT OF CROSS MOTION

or defamation as alleged in the second amended complaint, said defendants are entitled to summary judgment as a matter of law, with costs and disbursements.

/s/ [illegible]
NICHOLAS A. D'ONOFRIO

Verified September 26, 1974

AFFIDAVIT OF ROBERT WEINBERG, A DEFENDANT,
IN SUPPORT OF CROSS MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

(SAME TITLE)

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STATE OF NEW YORK :
SS.:
COUNTY OF WESTCHESTER :

ROBERT WEINBERG, being duly sworn, deposes and says:

1. That I am a named defendant in the above captioned proceeding, and that I am chairman of the Board of Robert Martin Corporation. That the President and chief executive officer of Robert Martin Corporation is defendant, Martin Berger, and between us we own all the stock in Robert Martin Corporation.

2. That I personally do not know the plaintiff, Mary Anne Guitar, and that I have never seen or met her.

3. That I personally do not know the defendant, H. Paul Jeffers, and that I have never seen or met him, or heard of him before the commencement of this law suit.

4. That prior to the commencementof this law suit, I was casually acquainted with the defendant, John Yottes when he was an employee of the Town of Greenburgh, Westchester County, New York due to the fact that the activities of the Robert Martin Corporation are heavily based in Greenburgh.

5. In the late summer or fall of 1972, the Robert Martin Corporation engaged the firm of Talents Unlimited, Inc., (Mr. John Yottes) to perform

public relation services for the corporation with respect to a land development project known as "Tarry-Green". That the main contact with the Corporation and John Yottes was done by Martin Berger, and I personally never had Mr. Yottes perform his services for me unless a technical problem involving planning or engineering was involved.

6. That I was not present at a meeting held by the Committee to save Irvington held at the Irvington High School on December 13, 1972.

7. That I had discussions concerning the shaping of our public relations program with other employees of the corporation concerning the opposition of civic associations neighborhood group and the public media to assist in informing the public and media in the best possible light of our desire to develop this project, Tarrygreen.

8. That I participated at the office of the Corporation and at public meetings to present the plan that we were espousing as it might bear on public consciousness of what we were trying to do and to make certain that the facts were properly presented and to correct any misimpressions that might have been created by those groups who were opposed to this land development project, Tarrygreen.

9. That our corporation, Robert Martin Corporation, to promote the acceptance of Tarrygreen had a series of meetings over a period of many months, starting with small groups of officials from the towns, and then from the villages and from the schools, and then from neighborhood associations, many of which were reported in the local press, and then there was held a public meeting. Our application for rezoning was filed September 7, 1972.

AFFIDAVIT OF ROBERT WEINBERG, A DEFENDANT,
IN SUPPORT OF CROSS MOTION

10. That I was personally present at a brunch meeting held at the Holiday Inn, Elmsford, New York on December 17, 1972 sponsored by Robert Martin Corporation at which various public officials and other guests who had or may have had an interest in this development project were invited and a factual presentation involving the statistics, data, explanations was presented, and the various alternative programs fully explained and discussed.

11. That I have never read the book, Property Power, and although I have never seen or met the author, Mary Anne Guitar, the plaintiff herein, I did see and read a copy of the transcribed book review by H. Paul Jeffers (Exhibit B) and my understanding and impression is that this book set forth techniques for stopping development.

12. That I was aware of and read the sheet identified as Exhibit B containing the transcript of the broadcast and the portion "Ms. Guitar quotes" and that it was reproduced, printed and distributed with other materials by Robert Martin Corporation at a public meeting held on December 20, 1972.

13. That our corporation or me personally is in any wise associated with the defendants, Westinghouse or Jeffers.

/s/ R W

ROBERT WEINBERG

Verified September 27, 1974

AFFIDAVIT OF MARTIN BERGER, A DEFENDANT,
IN SUPPORT OF CROSS MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

(SAME TITLE)

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STATE OF NEW YORK :
SS.:
COUNTY OF WESTCHESTER :

MARTIN BERGER, being duly sworn, deposes and says:

1. That I am a named defendant in the above entitled proceeding, and that I am the President and chief executive officer of ROBERT MARTIN CORPORATION. That the defendant, Robert Weinberg is Chairman of the Board, and that between us we own all the stock in Robert Martin Corporation.

2. That prior to the commencement of this case, I personally did not know the plaintiff, Mary Anne Guitar, and had not seen or met her, but I had read her book, Property Power, and I did know of her ideas and programs concerning land development and land trusts, and that she attended and spoke at various public meetings concerning this subject.

3. That I personally do not know the defendant, H. Paul Jeffers, have not seen or met him; and neither myself, individually, or on behalf of the Robert Martin Corporation was associated in any manner whatsoever with defendants, Westinghouse.

4. That prior to the commencement of this law suit, I was acquainted with the defendant, John Yottes, for several years when he was an employee of the Town of Greenburgh due to the fact that the activities of the Robert

Martin Corporation are heavily based in that area. I also was aware that he engaged in public relation work. I was not aware that he had worked or been employed by radio station WINS.

5. That in the late summer or fall of 1972, I, on behalf of the Robert Martin Corporation, engaged the firm of Talents Unlimited, Inc., (Mr. John Yottes) to perform public relations services for the corporation with respect to our land development project known as "Tarry Green". Neither this firm or Mr. Yottes were employees of the Corporation, but were engaged as independent contractors.

6. That I was aware of a meeting held by the Save Irvington Committee on December 13, 1972, and that I requested two of our employees, MARGARET MIGLIORE SCHNEIDER, and GERALD DAVIS LLOYD to attend, take notes, and to report their observations and what took place back to me.

7. That I was very instrumental in setting up a brunch meeting to be held at the Holiday Inn, Elmsford, New York on December 17, 1972 to be sponsored by Robert Martin Corporation to which various public officials, and other guests, who had or may have had an interest in this development project were invited to present and inform them of the various alternative programs that were being considered for the development of Tarry green by Robert Martin Corporation.

8. That during the course of this brunch meeting, I was informed of the Jeffers review on station WINS of Ms. Guitar's book, "Property Power" by Mr. Yottes, and that he had made a tape of the broadcast. We discussed its contents and I decided it would be advantageous to have it reprinted and distributed at the public meeting, along with other materials to be held on

AFFIDAVIT OF MARTIN BERGER, A DEFENDANT,
IN SUPPORT OF CROSS MOTION

December 20, 1972.

9. That Exhibit B containing a reprint of the Jeffer's broadcast of the book review, and an additional portion entitled "Ms. Guitar's Quotes" was prepared, printed and distributed under my supervision along with other materials at the public meeting held on December 20, 1972.

10. That the portion of the Exhibit B reprint "Ms. Guitar quotes" were prepared by me and taken from the book and substantially taken from notes and magazines referring to Ms. Guitar's writing or appearances at meetings.

11. That I participated in presenting the development plan, Tarry green, at various public and private meetings, and engaged in espousing this plan in the most favorable light for its acceptance, and to make the officials, public, and all concerned aware of what we were trying to do, and to make certain that the facts were properly presented, and to correct any mis-impressions that might have been created by those who opposed our land development project, Tarry green.

MARTIN BERGER

Verified September 27, 1974

CROSS NOTICE OF MOTION OF DEFENDANTS SCHNEIDER AND LLOYD JOINING IN FOR DISMISSAL OF ACTION BY SUMMARY JUDGMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

(SAME TITLE)

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PLEASE TAKE NOTICE that in this consolidated action, upon the complaint in 73 Civ. 5287, the answer of MARGARET MIGLIORE SCHNEIDER and GERALD DAVID LLOYD together with the annexed statement pursuant to Rule 9(g) of this Court, the annexed affidavits of F. V. MINA, sworn to on the 4th day of October, 1974, the annexed affidavits of MARGARET MIGLIORE SCHNEIDER, sworn to on the 4th day of October, 1974 and the annexed affidavits of GERALD DAVID LLOYD, sworn to on the 4th day of October, 1974, and incorporating herein the exhibits contained in the motion papers submitted by the defendants, WESTINGHOUSE, and all prior proceedings heretofore had herein, defendants, MARGARET MIGLIORE SCHNEIDER and GERALD DAVID LLOYD, will cross-move this Court on October 4, 1974 at 10:00 A.M. in Courtroom 1105 before the Honorable ROBERT L. CARTER, at the United States Courthouse for the Southern District of New York, Foley Square, New York, or as soon thereafter as counsel

CROSS NOTICE OF MOTION OF DEFENDANTS
SCHNEIDER AND LLOYD JOINING IN FOR
DISMISSAL OF ACTION BY SUMMARY JUDGMENT

may be heard for an order pursuant to Rule 56(b) of the Federal Rules of Civil Procedure dismissing the complaint as to th defendants, MARGARET MIGLIORE SCHNEIDER and GERALD DAVID LLOYD, on the grounds that there is no genuine issue as to any material fact and that said defendants are entitled to a judgment as a matter of law with costs and disbursements.

PLEASE TAKE FURTHER NOTICE that pursuant to the rules of this Court, answering papers, if any, are required to be served on the undersigned at least three (3) days before the return date of this mc ion.

Dated: New York, New York
October 2, 1974

F. V. MINA
Attorney for Defendants
MARGARET MIGLIORE SCHNEIDER
and GERALD DAVID LLOYD
127 John Street
New York, New York 10038
(212) 344-5333

By: F. V. Mina
A Member of the Firm

CROSS NOTICE OF MOTION OF DEFENDANTS SCHNEIDER AND LLOYD JOINING IN FOR DISMISSAL OF ACTION BY SUMMARY JUDGMENT

To: WINDELS & MARX, ESQS.
Attorneys for Plaintiff
51 West 51st Street
New York, New York 10019

JOHN J. MACCHIA, ESQ.
Townley, Updike, Carter & Rodgers
Attorney for Defendants
Westinghouse Electric Corporation,
Westinghouse Broadcasting Co., Inc.
(Del.) and H. Paul Jeffers
220 East 42nd Street
New York, New York 10017

VINCENT F. CERCHIARA, ESQ.
Cerchiara & Cerchiara
Attorney for Defendant
John Yottes
145 Mt. Vernon Avenue
Mount Vernon, New York 10450

NICHOLAS A. D'ONOFRIO, ESQ.
Attorney for Defendants
Robert Martin Corporation,
Robert Weinberg and Robert Berger
123 William Street
New York, New York 10038

STATEMENT PURSUANT TO RULE 9 (g)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

(SAME TITLE)

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Defendants, MARGARET MIGLIORE SCHNEIDER and GERALD DAVID LLOYD, for their statement pursuant to Rule 9(g) of the General Rules of this Court, contend that with respect to each of the following material facts there is no genuine issue to be tried:

1. Defendant, Gerald David Lloyd, is the Vice President of defendant, Robert Martin Corporation, and defendant, Margaret Migliore Schneider, as an employee of said corporation. Robert Martin Corporation is a real estate developer and a New York Corporation with its executive offices in Elmsford, New York, engaged in the construction and development of a project known as Tarrygreen. Defendant, Martin Berger, is President of said corporate defendant, and defendant, Robert Weinberg is Chairman of the Board.

2. Defendant, Robert Martin Corporation, hired John Yottes and his firm, Talant Unlimited, Inc., as an independent contractor to perform public relations and

STATEMENT PURSUANT TO RULE 9 (g)

services with respect to the project known as Tarrygree .

3. On December 17, 1972, a book review by defendant Jeffers of the plaintiff's book "PROPERTY POWER" was broadcast over radio station WINS.

4. That at a meeting on December 20, 1972, at the Greenburgh Town Hall, Robert Martin Corporation distributed a printed copy of Jeffers' taped broadcast, the printed "review" of plaintiff's book, and which also contained the material on the bottom "Ms. Guitar quotes", and is identified in the main moving paper as Exhibit C.

5. Exhibit C consists of Jeffers comments and opinion as a literary critic dealing with a published literary work concerning a matter of public interest printed from a tape made of the broadcast, and the "Ms. Guitar quotes" contained thereon come substantially from the book and other statements made by plaintiff in her book or in public statements.

6. Margaret Migliore Schneider and Gerald David Lloyd had no connection, association or control over defendants Westinghouse, H. Paul Jeffers or John Yottes as to and concerning the book review broadcast by Jeffers of the

STATEMENT PURSUANT TO RULE 9(g)

plain iff's book over WIN'S on December 17, 1972.

F. V. MINA
Attorney for Defendants
MARGARET MIGLIORE SCHNEIDER
and GERALD DAVID LLOYD
127 John Street
New York, New York 10038
(212) 344-5333

By: F. V. Mina
A Member of the Firm

AFFIDAVIT OF F. V. MINA, ESQ., FOR DEFENDANTS SCHNEIDER AND LLOYD, IN SUPPORT OF CROSS MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

(SAME TITLE)

----------x

F. V. MINA, Esq., being duly sworn, deposes and says:

1. I am an attorney, admitted to practice in this Court. I am the attorney for the defendants, MARGARET MIGLIORE SCHNEIDER and GERALD DAVID LLOYD, and as such am familiar with the proceedings herein.

2. This affidavit is made in support of a motion by the defendants herein for summary judgment dismissing the complaint on the grounds that there are no genuine issues of material fact and that defendants herein are entitled to judgment as a matter of law.

3. Plaintiff commenced this action against the two defendants in December, 1973. (73 Civ. 5287.) (Exhibit A attached.) This action was later consolidated with another cause of action, MARY ANN GUITAR v. WESTINGHOUSE ELECTRIC CORP., WESTINGHOUSE BROADCASTING CO., INC. (DEL.), H. PAUL JEFFERS, ROBERT WEINBERG, ROBERT MARTIN CORP., MARTIN BERGER

and JOHN YOTTES (73 Civ. 161 RLC) by an order of the Court dated April 15, 1974.

4. The complaint against the defendants, MARGARET MIGLIORE SCHNEIDER and GERALD DAVID LLOYD, alleges three causes of action.

a. A claim against the defendants herein for defaming the plaintiff and acting in collusion, cooperation, consort and connivance with Martin Weinberg, Berger and Yottes to further that end. (First cause of action.)

b. A claim against the defendants herein for defaming the plaintiff and acting in collusion, cooperation, consort and connivance with Martin, Weinberg, Berger, Yotts, Westinghouse Electric, Westinghouse Broadcasting and Jeffers to further that end. (Second cause of action.)

c. A claim against the defendants alleging a conspiracy to violate certain sections of the Communications Act of 1934, as amended, i.e. 47 U.S.C. §317, 501, 502, 503 and 508.

5. Defendant, GEROLD DAVID LLOYD, is a vice president of Robert Martin Corp., a defendant in the consolidated action. The defendant, MARGARET MIGLIORE SCHNEIDER, is an employee of Robert Martin Corp.

AFFIDAVIT OF F. V. MINA, ESQ., FOR DEFENDANTS SCHNEIDER AND LLOYD, IN SUPPORT OF CROSS MOTION

6. Robert Martin Corp. is a real estate developer and a New York Corporation with its offices in Elmsford, New York and is engaged in the construction and development of a project known as Tarrygreen.

7. Westinghouse Broadcasting owns and is the licensee of radio station WINS in New York City. It is a wholly owned subsidiary of Westinghouse Broadcasting Co., Inc. which is in turn a wholly owned subsidiary of Westinghouse Electric. H. Paul Jeffers, at the time of the broadcast, was a full time editor employed by radio station WINS. John Yottes was allegedly an independant contractor for WINS prior to December 3, 1972 and subsequent to February 2, 1973. He was not employed in any capacity by WINS at the times alleged in the claims herein.

8. On Sunday, December 17, 1972, Westinghouse Broadcasting Co., Inc., over its radio station WINS, did broadcast as part of its regular news "Future of Public Interest" a review by H. Paul Jeffers of a book written by the plaintiff entitled "PROPERTY POWER" (attached herein as Exhibit B). A printed reproduction of the review (attached herein as Exhibit C), which also contained certain quotes attributed to the plaintiff, was distributed on

AFFIDAVIT OF F. V. MINA, ESQ., FOR DEFENDANTS SCHNEIDER AND LLOYD, IN SUPPORT OF CROSS MOTION

December 20, 1972 by Robert Martin Corp. along with certain other material pertinent to the promotion of its project Tarrygreen. The plaintiff claims that these two publications are defamatory of her. In addition, she claims that these publications were the result of a conspiracy to violate certain penal provisions of the Communications Act of 1934.

9. The defendants herein contend:

a. That with respect to the defamation claim, this claim should be dismissed for anyone of the following reasons:

1. The publication of the book review is not defamatory on its face. The publication is a critical review by an acknowledged critic and therefore is privileged.

2. To hold the publication and the right to disseminate same an actionable matter would disregard the constitutional privilege conferred on the defendants herein.

b. The plaintiff alleges conspiracy between the defendants, LLOYD and SCHNEIDER, and the other defendants Martin, Weinberg, Berger, Yottes, General Electric, General Broadcasting and Jeffers without the slightest substantiation. After concluding all the pre-trial depo-

sitions the plaintiff has yet to uncover the slightest indication of a conspiracy. The plaintiff has totally failed to satisfy the burden of making affirmative the showing of evidentiary facts to support her claim of conspiracy.

c. The plaintiff's allegation that the defendants conspired to violate Title 47 U.S.C.A. § 317, 501, 502, 503 and 508 is totally without merit for several reasons.

1. The above stated sections refer to violations by a radio station or persons involved therewith. The defendants herein are employees of Robert Martin Corp. and have had no connection or relation with any radio station and as such could not possibly come under said provioions.

2. § 317 and 503 of Title 47 U.S.C.A. refer to the payments of money for certain radio transmissions. In the case law there have neither been any allegations of such payment nor any substantiation that payments have been made.

3. Thirdly, all the sections referred to in the complaint under Title 47 of the U.S.C.A. apply to certain criminal sanctions imposed by the government or the Federal Communications Commission. This clearly is not

AFFIDAVIT OF F. V. MINA, ESQ., FOR DEFENDANTS SCHNEIDER AND LLOYD, IN SUPPORT OF CROSS MOTION

the proper forum for there is no grant of a private right of action under these sections.

10. It becomes apparent, after reviewing the facts involved, that the plaintiff has totally failed to produce the evidence necessary to sustain a cause of action and the Courts have consistently held that a failure to meet this burden requires an award of summary judgment to the defendants.

WHEREFORE, defendants respectfully request that their motion to dismiss the plaintiff's complaint be granted as a matter of law, with costs and disbursements.

Dated: New York, New York
September 30, 1974

F. V. MINA

By: F. V. Mina
A Member of the Firm

Verified October 4, 1974

AFFIDAVIT OF MARGARET MIGLIORE SCHNEIDER, A DEFENDANT, IN SUPPORT OF CROSS MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

(SAME TITLE)

----------x

MARGARET MIGLIORE SCHNEIDER, being duly sworn, deposes and says:

1. That I am a named defendant in the above captioned proceedings and that I am the Executive Secretary to ROBERT WEINBERG and MARTIN BERGER, Chairman of the Board of ROBERT MARTIN CORPORATION and President and Chief Executive Officer respectively.

2. That I personally did not know the plaintiff, MARY ANNE GUITAR, and that I have only seen her on one occasion which was at the Irvington High School on December 13, 1972.

3. That I personally did not know the defendant, H. PAUL JEFFERS, and that I have never seen or met him or heard of him before the commencement of this lawsuit.

4. That as a secretary of ROBERT MARTIN CORPORATION, I am not in a position to be part of the decision making process and therefore I have no knowledge of

the allegations involved in this suit.

5. That I have not read the plaintiff's book "PROPERTY POWER" and I have no animosity towards the plaintiff in that I have never had a basis to form such animosity.

6. That I have never discussed the plaintiff or her book prior to the commencement of this lawsuit with any of the defendants named herein.

7. That my contacts with my employers have in no way lead to any association or knowledge between myself and the other defendants, WESTINGHOUSE ELECTRIC, WESTINGHOUSE BROADCASTING and H. PAUL JEFFERS.

Margaret Migliore Schneider
MARGARET MIGLIORE SCHNEIDER

Verified October 4, 1974

AFFIDAVIT OF GERALD DAVID LLOYD,
A DEFENDANT, IN SUPPORT OF CROSS MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(SAME TITLE)

---x

GERALD DAVID LLOYD, being duly sworn, deposes and says:

1. That I am a named defendant in the above captioned proceedings and that I am a Vice President of Robert Martin Corporation. My main responsibilities at Robert Martin Corporation are the marketing of office and industrial space, involving also public relations and community relations.

2. That my only contacts with the plaintiff, MARY ANNE GUITAR, were confined to a debate at Mahopac in which I was asked to participate as a representative of the Builder's Institute of Westchester County.

3. That I personally did not know the defendant, H. PAUL JEFFERS, and that I have never seen or met him or heard of him or his radio broadcast. I had no knowledge of his radio review until this lawsuit.

4. That prior to the commencement of this lawsuit, I was casually acquainted with the defendant, JOHN YOTTES, because of his involvement in community affairs in the Town of Greenburgh, Westchester County.

AFFIDAVIT OF GERALD DAVID LLOYD,
A DEFENDANT, IN SUPPORT OF CROSS MOTION

5. That I was present at a meeting held by the Committee To Save Irvington on September 13, 1972, solely out of curiosity because of my previous debate with her at Mahopac. I sat in the general audience. That aside from a memorandum of that meeting forwarded to my employer, ROBERT MARTIN CORPORATION, and some expressed opinions to said corporation in connection with that memorandum, I have neither discussed the plaintiff nor written about her nor have I been involved in any other way with activities that relate to her or her book.

6. That I was personally present at a lunch meeting held at the Holliday Inn at Elmsford, New York on December 17, 1972 sponsored by ROBERT MARTIN CORPORATION at which various public officials and other guests were present who had or may have had, an interest in the development of this project. My presence there was merely to deliver and administer certain sound and audio visual equipment, which equipment is used in my department and over which I have personal custody. I did not actively participate in this meeting, nor did I discuss the plaintiff with any individuals there.

7. That I have read the plaintiff's book "PROPERTY POWER" and for many reasons disagreed with its contents. However, I have no animosity towards the plaintiff,

AFFIDAVIT OF GERALD DAVID LLOYD,
A DEFENDANT, IN SUPPORT OF CROSS MOTION

MARY ANNE GUITAR nor have I expressed any animosity towards her in the past.

GERALD DAVID LLOYD

Verified October 4, 1974

NOTICE OF MOTION OF DEFENDANT YOTTES JOINING IN FOR DISMISSAL OF ACTION BY SUMMARY JUDGMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

(SAME TITLE)

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PLEASE TAKE NOTICE that, in this consolidated action, upon the second amended complaint in 73 Civ. 161, the answer of JOHN YOTTES together with the annexed statement pursuant to Rule 9(g) of this Court, the annexed affidavit of VINCENT F. CERCHIARA, sworn to on the 3rd day of October, 1974, the annexed affidavit of JOHN YOTTES, sworn to on the 4th day of October, 1974, and incorporating herein the exhibits and memoranda contained in the motion papers submitted by the co-defendants herein, and all prior proceedings heretofore had herein, defendant JOHN YOTTES will cross move this Court on October 25th, 1974, at 10:00 A.M. in Courtroom 1105 before the Honorable ROBERT L. CARTER, in the United States Courthouse for the Southern District of New York, Foley Square, New York or as soon thereafter as counsel may be heard, for an Order pursuant to Rule 56(b) of the Federal Rules of Civil Procedure dismissing the second amended complaint as to the defendant JOHN YOTTES on the ground that there is no genuine issue as to any material fact and that said defendant is entitled to judgment as a matter

NOTICE OF MOTION OF DEFENDANT YOTTES JOINING IN FOR DISMISSAL OF ACTION BY SUMMARY JUDGMENT

of law, with costs and disbursement.

PLEASE TAKE FURTHER NOTICE that pursuant to the rules of this Court, answering papers, if any, are required to be served on the undersigned at least three (3) day before the return date of this motion.

DATED: Mount Vernon, New York
October 4th, 1974

Yours, etc.

CERCHIARA & CERCHIARA

By: Vincent F. Cerchiara
A Member of the Firm
Attorneys for Defendant
John Yottes
145 Mount Vernon Avenue
Mount Vernon, New York 10550

TO: WINDELS & MARX
Attorneys for Plaintiff
51 West 51st Street
New York, NY 10019

NICHOLAS A. D'ONOFRIO
Attorney for Defendants
Robert Martin Corporation,
Robert Weinberg and
Martin Berger
123 William Street
New York, NY 10038

NOTICE OF MOTION OF DEFENDANT YOTTES JOINING IN FOR DISMISSAL OF ACTION BY SUMMARY JUDGMENT

JOHN MACCHIA, ESQ.
TOWNLEY, UPDIKE, CARTER & RODGERS
Attorneys for Defendants
Westinghouse Electric Corporation,
Westinghouse Broadcasting Co., Inc.
(Del.) and H. Paul Jeffers
220 East 42nd Street
New York, NY 10017

F. V. MINA, ESQ.
Attorney for Defendants
Margaret Migliore Schneider
and Gerald David Lloyd
127 John Street
New York, NY 10038

STATEMENT PURSUANT TO RULE 9 (g)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

(SAME TITLE)

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Defendant JOHN YOTTES, for his statement pursuant to rule 9 (g) of the General Rules of this Court, contends that with respect to each of the following material facts, there is no genuine issue to be tried.

1. Defendant JOHN YOTTES is engaged in public relations work with his office in Greenburgh, New York.

2. Defendant JOHN YOTTES was hired by ROBERT MARTIN ASSOCIATES to perform public relations work and services with respect to the development of a real estate project known as Terrygreen.

3. On December 17th, 1972, a book review by defendant H. PAUL JEFFERS of the plaintiff's book, Property Power, was broadcast over radio station WINS.

4. That the defendant JOHN YOTTES made a tape recording of the broadcast of the book review on December 17th, 1972, and then gave a transcript of the "review" to either MARTIN BERGER or ROBERT WEINBERG.

STATEMENT PURSUANT TO RULE 9 (g)

5. That the defendant JOHN YOTTES had no connection, association or control over defendants WESTINGHOUSE and H. PAUL JEFFERS or advance knowledge as to and concerning the "review" broadcast by JEFFERS of the plaintiff's book over WINS on December 17th, 1972.

6. That defendant JOHN YOTTES had no connection, association or control over the defendants ROBERT MARTIN CORPORATION, ROBERT WEINBERG, MARTIN BERGER, MARGARET MIGLIORE SCHNEIDER, and GERALD DAVID LLOYD in the preparation or distribution of a printed "review" of plaintiff's book together with "quotes" of Mrs. GUITAR which is identified in the main moving papers as Exhibit B and which was distributed at a meeting on December 20th, 1972, by the ROBERT MARTIN CORPORATION.

DATED: Mount Vernon, New York

Yours, etc.

CERCHIARA & CERCHIARA

By: Vincent F. Cerchiara

A Member of the Firm
Attorneys for Defendant
John Yottes
145 Mount Vernon Avenue
Mount Vernon, New York 10550

AFFIDAVIT OF VINCENT F. CERCHIARA, ESQ., FOR DEFENDANT YOTTES, IN SUPPORT OF MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

(SAME TITLE)

----------x

STATE OF NEW YORK)
COUNTY OF WESTCHESTER)ss.:

VINCENT F. CERCHIARA, being duly sworn, deposes and says:

1. I am an attorney, admitted to practice in this Court, and Attorney for defendant JOHN YOTTES, and I am familiar with the proceedings herein.

2. This affidavit is made in support of a motion by JOHN YOTTES and in support of a cross motion by defendants, ROBERT MARTIN CORPORATION, ROBERT WEINBERG and MARTIN BERGER in connection with, and in support of a motion by defendants WESTINGHOUSE and JEFFERS for summary judgment dismissing the second amended complaint on behalf of all the defendants on the ground that there are no genuine issues of material facts and that all defendants are entitled to judgment as a matter of law.

3. That in order to avoid multiple repitition and redundancy, your deponent respectfully prays that this Court will

accept and incorporate the papers, affidavits, exhibits and memoranda of law submitted on behalf of defendants WESTINGHOUSE, JEFFERS, ROBERT MARTIN CORPORATION, BERGER and WEINBERG to also be used where applicable to the issue concerning plaintiff and the defendant JOHN YOTTES, as if set forth in full in this motion.

4. That the defendant JOHN YOTTES is engaged in public relations work with his office in Greenburgh, New York and that he was hired by ROBERT MARTIN ASSOCIATES to perform public relations work and services with respect to the development of a real estate project known as Tarrygreen.

5. On Sunday, December 17th, 1972, defendant Broadcasting, over its radio station WINS, on at least two (2) different time periods, broadcast a review by H. PAUL JEFFERS of a book written by the plaintiff entitled Property Power. This broadcast was heard by the defendant, JOHN YOTTES, and he made a tape recording of the broadcast of the book review and then gave a transcript of the tape of the " review " to ROBERT MARTIN CORPORATION.

6. That the defendant JOHN YOTTES had no connection, association or control over defendants WESTINGHOUSE and H. PAUL JEFFERS or advance knowledge as to and concerning the " review "

broadcast by JEFFERS of the plaintiff's book over WINS on December 17th, 1972.

7. That the defendant JOHN YOTTES had no connection, association or control over the defendants ROBERT MARTIN CORPORATION, ROBERT WEINBERG, MARTIN BERGER, MARGARET MIGLIORE SCHNEIDER, and GERALD DAVID LLOYD in the preparation or distribution of a printed "review" of plaintiff's book together with "quotes" of Mrs. Guitar which is identified in the main moving papers as Exhibit B and which was distributed at a meeting on December 20th, 1972 by the ROBERT MARTIN CORPORATION.

8. That although the defendant JOHN YOTTES is not and was not involved in any way in the preparation, publication and reproduction of the review he contends that with respect to plaintiff's claim of defamation, that the broadcast, publication and reproduction of the JEFFERS book review is not libelous or actionable and is fair comment as to a book written and published by the plaintiff.

9. That with respect to plaintiff's claim of conspiracy, after exhaustive depositions and pre-trial discovery, the plaintiff has totally failed to prove her burden to make any affirmative showing of evidentiary facts to support her claims. That a careful review of all the evidence reflects that although defendant

AFFIDAVIT OF VINCENT F. CERCHIARA, ESQ., FOR DEFENDANT YOTTES, IN SUPPORT OF MOTION

JOHN YOTTES was at one time employed as a " Casual " at WINS, he was not employed by them for the period from the end of November, 1972 to February, 1973. That although defendant YOTTES knew defendant JEFFERS from his employment at WINS, he was not employed by them for the period covering the broadcast of the " review " or the subsequent reproduction and publication. The evidence is uncontradicted that they had no Contact other than through employment and that they never discussed the review. That the broadcast of the review and the reproduction, printing and distribution by ROBERT MARTIN CORPORATION of "Exhibit B" was two separate, indipendant acts in no way related to each other, and in no way intended to cause harm to plaintiff, and that this cause of action was based on pure speculation and should be dismissed both as a matter of law and of fact, and judgment granted to defendants.

10. That the plaintiff has failed to prove that she sustained any actual injury or loss of reputation with respect to her standing in the community.

11. That there being no genuine issue of material fact for trial as to the defendants JOHN YOTTES with respect to the claim and/or causes of action for conspiracy or defamation as alleged in the second amended complaint, and defendants are entitled

AFFIDAVIT OF VINCENT F. CERCHIARA, ESQ., FOR DEFENDANT YOTTES, IN SUPPORT OF MOTION

to summary judgment as a matter of law, with costs and disbursements.

Vincent F. Cerchiara

VINCENT F. CERCHIARA

Verified October 3, 1974

AFFIDAVIT OF JOHN YOTTES, A DEFENDANT,
IN SUPPORT OF MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

(SAME TITLE)

----------x

STATE OF NEW YORK)

COUNTY OF WESTCHESTER) ss.:

JOHN YOTTES, being duly sworn, deposes and says:

1. I am a defendant in this action and make this affidavit in support of the motion herein for summary judgment dismissing the second amended complaint.

2. That I am engaged in public relations work and maintain an office in Greenburgh, New York and that in late 1972, I was retained by ROBERT MARTIN CORPORATION to perform public relations work and services with respect to the development of a real estate project known as Tarrygreen.

3. That prior to December, 1972 and after January, 1973, I was employed by radio station WINS as a casual, but did not work for them from approximately Dec. 3, 1972 to February 2, 1973.

4. That during my employment at WINS, I did, during working hours, make the acquaintance of H. PAUL JEFFERS, however, I had no contact with him during the periods that I was not working at WINS.

AFFIDAVIT OF JOHN YOTTES, A DEFENDANT,
IN SUPPORT OF MOTION

5. That with respect to the review of Property Power by H. PAUL JEFFERS, I did not participate in any manner in the selection, preparation or broadcasting of the review, nor did I have any knowledge until the actual broadcast, that the book had been in fact selected by H. PAUL JEFFERS, as the subject of a review.

6. That I first heard part of the review in the early morning of December 17, 1972 and because I knew that the author of the book Property Power had appeared at a public meeting with reference to the real estate development on December 13, 1972, I called WINS and learned that the review was scheduled for broadcast again later the same day. I arranged to make a tape recording of the review, which I made upon the subsequent broadcast and thereafter transcribed the tape I made and gave it to ROBERT MARTIN CORPORATION. That aside from any conversation I may have had at the time I gave the transcript over on the early afternoon of December 17, 1972, I in no way participated in any discussions as to its further use.

7. That subsequent to the above, I attended a public meeting on December 20, 1972 and received a copy of what was purported to be a reprint of the Jeffer's broadcast of the book review with an additional portion entitled "Ms. Guitar's Quotes", which is set forth as Exhibit "B" in the second amended complaint.

8. That I did not have any discussions regarding the

AFFIDAVIT OF JOHN YOTTES, A DEFENDANT,
IN SUPPORT OF MOTION

preparation of Exhibit "B" nor was I consulted or have any connection, association or control over its use, preparation, publication or distribution by the other defendants herein.

S/ JOHN YOTTES
JOHN YOTTES

Verified October 4, 1974

AFFIRMATION OF ROBERT P. KNAPP, JR., ESQ., FOR PLAINTIFF, IN OPPOSITION TO MOTIONS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

(SAME TITLE)

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I, Robert P. Knapp, Jr., an attorney for the plaintiff in this action affirm the following to be true under the penalties provided for perjury:

1. I make this affirmation in opposition to the defendants' motion for summary judgment. Appended to this affirmation as the plaintiff's papers in opposition are the affidavits of Guitar, Appelbaum, Dolph, Harris, Kanefsky and Winnick and Exhibits A, B, G, L, M, N, P, R, W and Y.

2. Exhibit A is a table summarizing the defendants' answers to the second amended complaint. Exhibit B is the publication by the Martin defendants. Exhibit G is a summary of articles written by the plaintiff and submitted by her at the defendants' request on her deposition. Exhibit L are copies of alleged transcriptions of notes allegedly taken by the defendants Lloyd and Schneider at a meeting on December 13, 1972 as produced on the defendants' deposition. Exhibit M is a copy of the June 1972 Mademoiselle article that the defendant Berger produced on his deposition. Exhibit N is a copy of a New York Times article of December 16, 1972 which defendant Jeffers refers to in his deposition. Exhibit Y is a record of Yottes submitted by the

defendant Broadcasting on its deposition. Also submitted to the court herewith in opposition to the motion are the complete original depositions of all of the defendants except for the most recent deposition of the defendant Schneider, which she has not as yet executed.

3. It is to be noted that beneath the signature of Carole Dolph on her affidavit there appears the signature "Samuel S. Vaughn." As explained to me, procedure within Doubleday and Co., Inc. requires that anyone making an affidavit have departmental approval, which as I understand it, is why Mr. Vaughn has put his name on the affidavit. He did not execute the affidavit. It was prepared by me and executed by Carole Dolph after conversations with the plaintiff and me.

4. On February 6, 1974 the defendants Migliore (now Margaret Migliore Schneider) and Lloyd moved this court in 73 Civ. 5287 to dismiss the complaint against them on the ground that the complaint failed to state a cause of action and on other grounds. Their brief on that motion included certain arguments that they make again here. They alleged as do they now again as well as the other defendants, that no cause of action was maintainable under 47 U.S.C. §317. They also made the same argument that "A conspiracy cannot be alleged by vague and conclusory

allegations." On April 15, 1974 their motion was categorically denied by this court. It does not require citation to authority to show that all of the defendants are barred from moving again on these grounds by the doctrine of the law of the case, particularly as that doctrine has been expanded with respect to federal statutory rights in Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation, 402 U.S. 315 (1971).

5. In the papers submitted on this motion the proof shows by one fact after another that the plaintiff was defamed, that it was done in the first instance by Jeffers, who was not a bona fide book reviewer but a rather obvious follower of the old radio practice of "payola," and that the Martin defendants, not content with the virulence of the Jeffers defamation, followed up with their own defamation. In each instance publication was done willfully and maliciously with the sole purpose and intent of injuring the plaintiff for the pecuniary benefit of those who published the defamations. The defendants in their pleadings have denied these assertions and they continue to deny them, thereby creating multitudinous issues of fact requiring trial by jury.

I respectfully submit that the defendants' motion should be in all respects denied.

New York, New York
October 23, 1974

Robert P. Knapp, Jr.

PLAINTIFF'S STATEMENT PURSUANT TO RULE 9 (g)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

(SAME TITLE)

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Plaintiff for her statement pursuant to Rule 9(g) of the general rules of this court contends that with respect to each of the following material facts, there is a genuine issue to be tried:

1. Plaintiff is a free-lance writer. (complaint ¶1).

2. Plaintiff is a citizen of the State of Connecticut. (complaint ¶¶1, 11).

3. As an individual and a free-lance writer Plaintiff has become well and widely known for being and having been for over twenty-five years a "liberal" Democrat, opposed to racial discrimination, in favor of public housing and of the preservation and conservation of natural resources for all the people. (complaint ¶12).

4. For more than seven years the plaintiff has devoted her writing to conservation and the environment, expressing positions referred to in ¶3 above for which she has been well and widely known (complaint ¶13).

5. In his broadcast of a purported "book review"

PLAINTIFF'S STATEMENT PURSUANT TO RULE 9 (g)

the defendant Jeffers willfully, deliberately and intentionally distorted and omitted the full title of the book for the purpose of misrepresenting its true nature, character and content in order to defame and injure the plaintiff, her reputation, occupation and livelihood. (complaint ¶18).

6. In broadcasting the so-called "book review" of the defendant Jeffers, defendant Westinghouse Broadcasting Co., Inc. ("Broadcasting") acted for and on behalf of the defendant Westinghouse Electric Corporation ("Electric") by whom Broadcasting is controlled and dominated. (complaint ¶3).

7. Statements made by the defendant Jeffers (as set forth in ¶19 of the complaint) are false, untrue and without foundation in or relation to anything appearing in the plaintiff's book. (complaint ¶¶19,20).

8. On or about December 20, 1972, three days after Jeffers' broadcast, the defendants Robert Martin Corporation ("Martin"), Weinberg, Berger Lloyd and Schneider and Yottes distributed or caused to be distributed publicly what they falsely represented to be a printed reproduction of the said broadcast to which they added printed statements they falsely represented to be "quotations" of statements by the plaintiff, but the so-called "quotations" had in fact been maliciously fabricated and invented by the said defendants for the purpose of defaming the plaintiff. (complaint ¶¶21 through 26).

9. Jeffers' so-called "book review" was made in bad

PLAINTIFF'S STATEMENT PURSUANT TO RULE 9 (g)

faith for the sole purpose of defaming and discrediting the plaintiff, injuring her in her occupation and livelihood and holding her up to shame, contempt, contumely and ridicule. (complaint ¶¶29 through 34).

10. Both the radio broadcast and the printed publication were made pursuant to collusion and conspiracy among the defendants for the purpose of defaming and injuring the plaintiff as aforesaid in order to advance the pecuniary and financial self-interests of the individual defendants and of the defendant Martin for the joint and several gain and profit (complaint ¶37).

11. Apart from the allegation of "hypocrisy," which is libelous on its face, the defendants' publications were defamatory as a matter of fact.

12. The statements in the defendants' publications were allegedly fair (e.g., Westinghouse second affirmative defense.

13. The defendants' statements allegedly related to a matter of public interest (same defense).

14. The defendants' statements allegedly were an expression of honest opinion (same defense).

15. The defendants' publications allegedly were made without malice toward the plaintiff (same defense).

Plaintiff further contends that with respect to the defendants' statements under Rule 9(g) there is a genuine issue

PLAINTIFF'S STATEMENT PURSUANT TO RULE 9 (g)

to be tried as to each of the following material facts:

16. In the course of his employment by defendant Broadcasting on a regular basis, the defendant Jeffers broadcast so-called "book reviews," which appear from the nature and content to have been in all but a few instances promotional "blurbs" or "puffs," that is to say false praise corruptly and meretriciously broadcast by Jeffers for the purpose of advertising obscure books with no sales appeal. (Westinghouse statement ¶3).

17. On December 17, 1972 WINS broadcast a personal attack on the plaintiff in the guise of a "book review." (Westinghouse 9(g) statement ¶4; other defendants ¶3).

18. The broadcast personal attack on the plaintiff was ostensibly related on the word level only, but not in fact, to a published literary work concerning a matter of public interest (Westinghouse 9(g) statement ¶4; Martin and Schneider ¶5).

19. As to Westinghouse 9(g) allegation ¶6, that the broadcast "is based upon the plaintiff's book," please see ¶7 hereinabove. The same applies to Martin 9(g) statement ¶5 in part and Schneider ¶4 in part.

20. As to Westinghouse 9(g) allegation ¶7, that the broadcast "consists of Jeffers' comment and opinion," see ¶¶5, 7, 9 and 10 above. The same applies to Martin 9(g) and Schneider

PLAINTIFF'S STATEMENT PURSUANT TO RULE 9 (g)

9(g) ¶5.

October 23, 1974

New York, New York

WINDELS & MARX

By _____
A Member of the Firm

Attorneys for Plaintiff
51 West 51 Street
New York, New York 10019
(212) 977 9600

AFFIDAVIT OF MARY ANNE GUITAR, PLAINTIFF,
IN OPPOSITION TO MOTIONS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

(SAME TITLE)

----------x

STATE OF CONNECTICUT)
: ss.:
COUNTY OF FAIRFIELD)

I, MARY ANNE GUITAR, being duly sworn depose and say:

1. I am the plaintiff in this action, and I am making this affidavit in opposition to the defendants' motion for summary judgment. In making this affidavit I am going to show that the statements the defendants have made about me are not only not true but are contrary to everything that I have stood and worked for throughout my life as a writer, a conservationist and a person. These statements could have been intended only to discredit me and hold me up to contempt and ridicule by making it appear that I advocate and speak for beliefs that I have always been against, that I am a hypocrite and am in no way sincere in the things that I have written and spoken about.

2. I was born in St. Joseph, Missouri on January 27, 1922. I grew up in a family which loved the out-of-doors and worked hard to protect it. We lived in a neighborhood where the

houses were close together but near a public park. As I said in my book, I grew up in a community which valued open space and believed in setting it aside. "Even today, with its population of 73,000, the city has plenty of room for kids to roam, ponds for skating, hills for tobogganing, woods full of wildflowers -- a generous acre of open land for every sixty people." A feeling for the land, and a sense of responsibility for it, was bred into me by family and community example.

3. I attended public schools in St. Joseph and graduated with honors from Central High School. I was elected to the National Honor Society as a junior. I was a member of Quill and Scroll, the national honor society for high school journalists. I was editor of the high school literary magazine (Tower Gleams). I also held various class offices and was the single graduation speaker.

4. My field of interest was English. I was most fortunate that Central high school was big enough to accommodate advanced writing courses. Our "creative writing" teacher encouraged me to enter the Scholastic Magazine writing contests. I won awards in non-fiction writing during the years I entered these and other high school writing competitions. I entered Smith College in the fall of 1939 and graduated in 1943. I was editor of the literary magazine, and a member of the press board. I was elected to the honorary arts and letters society. I wrote and organized a number of theatrical productions.

5. I did not go home the summer after my sophomore year because money was tight and I had found a job on a small magazine. I worked for Twice-a-Year Press in Woods Hole, Massachusetts for three months and then returned to finish college. My parents asked me to come home for a year after I graduated from college and I did so. I worked at the local book store in St. Joseph -- until the summer of 1944, saving money so that I could go to New York and look for an editorial job.

6. During the next decade and a half I worked up from editorial assistant to managing editor. The magazines I worked for included Look, Liberty, the Woman's Home Companion, Lifetime Living (started by Christian Herald to service senior citizens). I also free-lanced magazine articles, film reviews for The Nation, book reviews for the New Republic while working in staff jobs. I was then, and am now, my own sole means of support. I have made my own living since college entirely by writing and editing.

7. In 1956 another magazine editor and I bought a house in West Redding, Connecticut for a total price of $14,500 including a $9,600 mortgage. I borrowed my part of the down payment from a friend, which I paid back over the years out of my freelance earnings.

8. Around 1960 I began to free-lance full time. Few writers are able to support themselves entirely with their earnings, something like one-half of one per cent according to statistics that I have heard. Two of my clients were located in Connecticut -- the Retirement Council in Stamford and Famous

Artists in Westport. I decided to winterize the house in West Redding, which had no central heat at this time, so that I could be near them. I spent more and more time in Connecticut and became a citizen of the state.

9. In the spring of 1965 the Redding Conservation Commission asked for volunteers to start a land trust. In Connecticut the Conservation Commission is a semi-autonomous municipal body charged by law with all conservation matters within a town. A land trust is a local non-profit corporation set up to accept and hold gifts of land for use by the public. Basically, the land trust idea was developed so that those who want to give land for public nature preserves, woodlands and other wild areas that require little or no improvement or maintenance could do so without having to go through the red tape and cumbersome, time-consuming legal and legislative procedures required in dedicating land to the state or municipality. There are now over sixty-five local land trusts in Connecticut. In all cases they work very closely with the local government authorities and conservation commissions in order to assure that the land given to the trusts is beneficial to the public good and welfare

10. I volunteered to become an incorporator of the Redding Land Trust along with another writer, an artist who specializes in wildlife painting, a journalist and a housewife. We were drawn to this project because we shared a love for nature and for our town. Over the summer we met regularly with advisers

on legal matters, with town officials and with those who could volunteer their services as naturalists. On November 23, 1965 we signed our "Certificate of Incorporation." Our aims were stated as follows:

> "To engage in and otherwise promote for the benefit of the general public the preservation of natural resources of the Town of Redding, including water resources, marsh land, swamps, woodland and open spaces and the plant and animal life therein and the preservation of open land areas of historical significance."

11. Since the Land Trust was formed it has received gifts of land amounting to over two hundred acres in parcels ranging from four to fifty acres and all of ecological significance. These holdings are held in trust for all the people now and for future generations; they are and will always be open to the public. The Trust also engages in and promotes the scientific study of natural resources.

12. I was elected President of the Land Trust in 1966 and served as President for three years. I still serve as a Trustee.

13. I became more and more involved with the burgeoning conservation movement in this country as I worked in my own community to save important natural resources. I joined the Nature Conservancy and the Audubon Society. I began to follow conservation news carefully. I had been taking horticultural and botanic courses at the Brooklyn Botanic Gardens and at their field station

in Westchester and I saw that my gardening and botanic magazines were emphasizing the growing environmental crisis, particularly in the ever more urbanized, so-called "Northeast Corridor."

14. Public concern over the disappearing natural world, which had long been taken for granted, was creating a growing demand and a growing audience for articles on the need to protect the environment. My own long-time personal feeling for the natural world, my expertise gained through local conservation work, my writing background and contacts with editors made it possible for me to interest magazines in articles on environmental questions. Beginning in 1966, when I developed a "Special Issue on The Future" for American Home, to this date I have been wholly immersed in thinking about and writing about conservation and preservation of the natural environment.

15. In a report, made at the request of the defendants, I listed the articles I have written on the environment, some thirty-five pieces in the last eight years. (Exhibit G).

16. In 1970 I proposed a book to my editors at Doubleday on the general subject of the widespread movements in conservation and land use. They liked the idea and gave me a contract to devote full time to a manuscript which was published in 1972 as Property Power: How to Keep The Bulldozer, The Power Line and The Highwaymen Away From Your Door.

17. The book prompted frequent requests from conserva-

tion and community groups for me to speak on the subject of environmental protection. I am happy to do so and set no fee, feeling that this is a contribution I can make to citizens who are, like me, working within their own towns on a volunteer basis to save natural resources for all the people.

18. I was elected a vice president and director of the Connecticut chapter of the Nature Conservancy in 1972, and I still continue to serve with this nonprofit, volunteer organization which accepts and conserves open land for the general public.

19. In 1969 I was elected to the Board of Selectmen in the town of Redding. There are three selectmen, the first and second are Republican. I am the minority member, a position mandated by Connecticut law, being a Democrat in a heavily Republican town. I have always been a registered Democrat (although my parents were Republicans) and have aligned myself with the "liberal" wing of the Party, working actively for Stevenson, Kennedy, Gene McCarthy, McGovern. I have been re-elected twice, and I have used my position to bring more young people into conservation activities such as recycling and nature study. I have worked within my Party to open it to newcomers, to make its deliberations open to the press and any interested onlookers, to see to it that I do my part to make the Board of Selectmen responsive to the public.

20. As a minority selectman, I think of myself as an ombudsman for the town, a kind of consumer advocate for open government. As a matter of fact Ralph Nader, has been a particular idol of mine from his earliest days in the public eye. While my age and sex must realistically be seen as obstacles to my ever attaining Nader's stature and ability to aid the consumer, it has been and remains my goal to attain the reputation, standing and financial means that will enable me to serve the interests of all of America's consumers in America's natural environment just as Nader has gained the stature and means to serve their interests in safe and beneficial consumer goods.

21. This was my thinking some eight years ago when I decided to invest my time, energy and writing skills in an effort (which I had all my life considered estimable) to save America's natural resources for all its people. I have concentrated on this effort at considerable personal sacrifice. My father died some ten years ago leaving me in all some $9,000 which has steadily been diminishing in recent years as I have spent more and more time on volunteer conservation activities. Fortunately, my mortgage is now paid up. I can live on my garden's produce part of the year. My 1967 Volvo still runs and saves gas. I can do without new clothes.

22. I have always felt that the very real achievements of the conservationists more than compensated for the personal

sacrifices they must make. I still feel that way.

23. In 1967 I helped form a Citizens Action Council, dedicated to the preservation of a livable environment. The Council is still active, working against erosion, pollution and other forms of environmental degradation. I am particularly proud that through a group I helped form, a Code of Ethics which I initiated was adopted by the Town as a guide for elected and appointed officials.

24. I have in fact always been an active participant in the affairs of whatever group I have been a member of, and the esteem and reputation, which I believe I have earned, have always meant much to me. I have maintained a close relationship with my college over the years, serving on the board of the Alumnae Quarterly (twice), on the board of the New York Smith Club and on my class committees and reunion projects. I was recently invited to participate in an Oral History of Smith's 100 years. The college celebrates its centennial in 1975-76, and I am one of a group of selected alumnae who have been invited to tape their views of the college and women's education in general. Some of this material will be published in early 1975.

25. At Look I was a member of the Newspaper Guild and active in negotiating sessions. I was invited to become a member of the Authors Guild of the Authors League of America in 1963, and I am an active member. Until recently, I served as vice

president of the Society of Magazine Writers.

26. Paragraph 19 of my second amended complaint sets forth excerpts from Jeffers' broadcast. These excerpts follow, divided by me into the six separate false allegations that Jeffers makes:

(a) "Her book is Property Power. It amounts to a handbook on how to keep others out."

(b) "The battle cry seems to be 'keep the others out.' People become secondary to trees and space . . . especially if the people are newcomers."

(c) "Property Power renounces progress even if it means decent livable homes for people."

(d) "Property Power says the rose covered cottage in the country is okay for those who got there first but must be offlimits to those who now would like to breathe some of that fresh air."

(e) "What bothers me about Property Power is the seeming hypocrisy of it."

(f) "On one hand the author writes, 'most of us simply want to live on the land.' Then she proceeds to write a book telling how to keep 'most of us' from doing so * * * Mary Anne Guitar's Property Power is a blueprint for exclusion . . . and, if followed, I'm afraid it's a blueprint for stagnation in the suburbs."

Each and every one of the foregoing statements, any combination or permutation of two or more of those statements as well as the Jeffers broadcast as a whole is false and without any basis or foundation in anything that appears in my book, Property Power: How to Keep The Bulldozer, The Power Line, And The Highwaymen Away From Your Door. Furthermore, Jeffers' intentional omission of the full title of the book is part of his misrepresentation. What Jeffers has done is not to characterize or comment upon the

book but to state deliberately that the subject of the book is entirely different from what it actually is and entirely contrary to any thought I have expressed in it.

27. At no time in my book or anyplace else have I ever advocated or engaged in any activity that could be characterized by the phrase "keep the others out."

28. "People" is what my book is about. In fact my original working title for the book was "People Power." All of my thoughts and activities are on behalf of people. The open space, the woodlands, the wetlands that I would like to see preserved, I would like to see preserved for people, all the people. The title of my book was changed from "People Power" because my publisher felt that title might cause confusion of my book with other works relating to other "Power" movements. My book is directed to the people who in so many instances in the past have had to stand by helplessly everywhere, both in the city and in the country, and see their homes and surroundings destroyed and despoiled by both private and public forces whose only goal has been to achieve their own ends without regard to the effect on those whose homes lie in the path.

29. On the evening of December 20, 1972 the Martin defendants distributed a leaflet at an official public zoning hearing on their Tarrygreen development in the Greenburgh Town Hall. This is Exhibit B to the complaint and also Exhibit B to these papers. I was not at that hearing (nor have I ever at any

time in any way made any appearance or presentation to the officials of Greenburgh or any other public official regarding the Martin Tarrygreen development). Below what Exhibit B falsely represents to be a transcript of the Jeffers broadcast, the Martin defendants appended what they falsely represented to be four quotations of remarks by me.

30. Not one of these remarks is true or accurate. Even in quoting me out of context, the Martin defendants deliberately altered and distorted what I had said. In the June 1972 Mademoiselle magazine (Exhibit M, 3rd column, 2nd paragraph) I had written:

> I have been a strong advocate of land preservation, been vocally opposed to "mindless growth" and left little doubt that, if elected, I would be happy to throw sand in the wheels of "progress."

The Martin defendants in their "Ms. Guitar Quotes" simply lopped off the first four-fifths of the sentence and said "I would be happy to throw sand in the wheels of progress," eliminating the all-important quotation marks I had put around the word "progress" thereby equating it to "mindless growth."

31. The first two quotations were:

> "My role is to make you feel less guilty about wanting to preserve your wooded boundaries and keep all newcomers out at all costs."
>
> "City people should be made to stay in the city."

I have never made any statements such as these. I have never

said in any context at any time "keep all newcomers out at all costs." Never in my life have I suggested keeping newcomers out under any circumstances. My actions and my instincts have always been to welcome newcomers. Nor have I ever said or thought that "city people should be made to stay in the city." I brand these statements as complete falsehoods intended only to defame me.

32. Strangely enough, in their desire to make me look bad in the eyes of a suburban audience, the Martin defendants unwittingly disclosed their own cynical lack of concern for the problems of the city by attributing to me a statement with which I agree wholeheartedly, even though I never made it in those words. Certainly "The City should not be robbed of its livelihood by enticing industry to the suburbs." The Martin defendants' manufacture and publication of this quotation in a futile effort to defame me only serves to demonstrate more strongly just what they had in view, a blatant appeal to what they believed were the prejudices of suburbanites. According to the notes that the defendant Lloyd took at the meeting of the Save Irvington Committee on December 13, 1972, what I actually said was (Exh. L p. 3):

> "We should keep the plants in the cities. Everybody would be better off. We can be the green belts for the denser areas. Let's not move the city to the country.
>
> * * *
>
> "New York City has more open space than Irvington. Irvington has only a few acres of park. It needs at least one quarter of its land mass." (Exh. L p. 4).

33. On Wednesday, December 13, 1972, four days before Jeffers' broadcast, at the request of Mrs. Rael Isaac I had gone to a meeting of the Save Irvington Committee in the Irvington High School. The Committee was deeply concerned over the effect of the Martin "Tarrygreen" project on their community. I made no charge for my attendance at that meeting, and expected none. It was, as I have said above, a matter of public service for me to share with others whatever information I have regarding successful popular efforts to preserve the environment.

34. As I have stated at the outset of this affidavit, I have continuously been involved with writing, editing and publishing since my high school days, first of course solely because I was interested in the field, enjoyed it and wanted to learn it, later, beginning in 1943 after my graduation from college because I had to earn a living, and writing was what I was equipped to do. As both an editor and a writer, I have for many years had much experience with book reviews and book reviewers. I can say without any qualification that the defendant Jeffers' so-called "review" was without precedent in my experience. I have never, that I can recall, before encountered a book review that was an attack on the personal life of the author and that completely falsified the actual subject and content of the author's book. I was frankly puzzled and resentful, but it did not immediately occur to me that the "review" had been broadcast with an ulterior motive.

35. It was only three days after the review, on Wednesday, December 20, 1972 that I discovered the motivation for the "review" when I was told of its having been reprinted by Robert Martin Corporation together with remarks falsely ascribed to me as referred to above, and distributed at a public hearing on the Martin rezoning application. It was then that I scrutinized the "review" more carefully and subsequently I have gone over the transcription of all of Jeffers' reviews.

36. I had been a book reviewer myself, and I had known many, many book reviewers during my years in writing and editing. Book reviewing is a characteristic occupation for struggling young writers, and characteristically that is the type of writer who turns out short reviews of the Jeffers variety. I have read Jeffers' depositions, and have noted all the different jobs that he worked at during the period, indicating to me a constant and understandable effort to get income anywhere he could. Jeffers says that WINS paid him twenty dollars for each review, which sounds like the sort of additional compensation that might be paid a writer or editor for short reviews outside of his regular work.

37. What strikes me as unusual about Jeffers' "reviews," however, is their frequent reliance on taped material. I also note that out of some sixty-five different books that he reviewed, there are only eight best sellers. Most of them, like my own, unfortunately, are obscure books that never attain large

sales. One final fact convinced me that if Jeffers was telling the truth, he was certainly not a bona fide book reviewer. Jeffers states in his deposition that he bought from book stores nearly all the books he reviewed. To me this statement is incredible if Jeffers was a bona fide book reviewer. As the Wall Street Journal says (Exh. W) free books are "the most cherished fringe benefit of a reviewer's job."

38. A book reviewer, any bona fide book reviewer, ordinarily gets through the medium for which he works anywhere from ten to twenty books for each one he reviews. Some reviewers may keep most of these extra books to build their libraries while others sell all but perhaps one or two that they particularly value. The Strand Book Store on downtown Broadway in New York is famous among book reviewers as the place where review books are purchased, at a discount of course, for resale. As I heard of one reviewer saying recently, "There at the Strand Book Store one always sees a line of book reviewers with baskets of books to sell." It is simply not conceivable that a bona fide book reviewer being paid only twenty dollars for a review would neglect this source of income.

39. Everything I have heard and read about the defendant Jeffers tells me as a writer, editor and book reviewer that while he was broadcasting "book reviews" for WINS, he was not and never was a bona fide book reviewer. True, from time to

time he might have put on the air his own views and comments on some best sellers, but most of the time he was very obviously plugging books that did not achieve popularity. Two very remarkable statistics emerge from my study of his reviews. Of the sixty-one tapes of broadcasts submitted to my attorneys pursuant to the order of the court, 58 were ostensibly "book reviews." However, on seven of these 58 "reviews," Jeffers "reviewed" 2 books, making a total of 65 different books "reviewed." In addition 3 of the tapes transcribed by my attorneys covered matters other than "book reviews." One was an eulogy for Marianne Moore, who died the day of the broadcast; another was a review of a play by Gore Vidal, which had just opened, and one was a parody review of the income tax return form 1040. Thus, to recapitulate, there are 61 broadcasts; 58 related to books and 65 books were reviewed.

40. However, as appears from the accompanying affidavit of Paul Kanefsky, only 8 of the 65 books reviewed, or less than 1 out of 8 were on the best seller list. This is an astonishing statistic to me as a writer, editor and book reviewer. WINS has repeatedly proclaimed its mission as "All News All The Time." Any medium that runs book reviews, but particularly a news medium, strives to review books that it believes will be popular among its audience, but Jeffers spent most of his time pushing unpopular books. In his affidavit on this motion,

Jeffers said that his "reviews . . . were broadcast over WINS as news features" (¶2).

41. This very small number of best sellers coupled with Jeffers' heavy reliance on taped materials can only suggest that what Jeffers was primarily doing was promoting books for publishers. Everything points to this conclusion. The many tapes that he used had to have come from the publishers. Looking for example at the first seven reviews in Exhibit R, from October 1971 through December 1971, there are six tapes. It is well known in publishing that tapes are put out by publishers for the purpose of publicity. In one period, from March 19, 1972 through April 23, 1972, seven out of nine of Jeffers' reviews used publishers tapes (Exhibit R). Again, in the very brief two-week period from May 13, 1972 to May 27, 1972 every single review, six in a row used publishers tapes. This can only suggest to me that Jeffers was not a bona fide book reviewer, that is to say, he reviewed books not because they would be of interest to his audience but because he was first and foremost a promoter for publishers. It would be naive, in my opinion, to think that Jeffers undertook this promotion purely for the $20 per review that he said he got from WINS. It is most likely that Jeffers got into the business of book reviewing because he received offers from publishers for the promotion of their books. If he would take "payola" to promote books, he would take "payola" to hurt me.

42. Another curious fact emerges from Jeffers' reviews, further evidence that in his reviews he had some motivation other than fair comment. In all of the 65 books he reviewed there was, aside from mine, only one other that was published by Doubleday, but Doubleday is the largest publisher of trade books; it sells more than any other. It is hard to believe that if Jeffers had been reviewing books on their merits that he would have found so few from Doubleday that were worthy of review. On the other hand, in a one-month period from May 25, 1972 through June 23, 1972 Jeffers reviewed no less than three books by Walker & Co., a small and relatively obscure publisher. Needless to say, none of these books ever got on the best seller list.

43. Finally, and I might almost say above all, Jeffers' failure to get free books from the publishers indicates to me that he either was not a bona fide book reviewer, because free books are one of the greatest sources of extra income for book reviewers, who sell them; or Jeffers was not telling the truth when he said that he did not get free books.

44. As I have stated above, I have for many years made my living as an editor and writer, more recently entirely in the latter field and entirely in nonfiction. My reputation for truth and veracity is indispensable to me in my chosen field. To be falsely, deliberately and maliciously accused of having expressed views that I did not express and that are completely contrary to what I am known for and to be charged in the same way

with hypocrisy is a flagrant attempt to expose me to contempt and ridicule and to destroy my livelihood.

45. As set forth in the affidavit of Pamela R. Winnick I have personally checked the publication date of Everson A Pictorial History of the Western Film by reference to Forthcoming Books in Print, a periodical put out by the publishers of Publishers Weekly. I have found that the paperback re-issue, which prompted Jeffers' review, was made in August 1971.

46. Based on the facts that I have set forth above as well as those appearing in the affidavits that accompany this, I am convinced, as I was when I first learned of the defendant Robert Martin Corporation's distribution of the alleged copy of the Jeffers broadcast together with false quotations attributed to me, that the Jeffers broadcast was a "phony book review" initiated by Martin for the purpose of discrediting and defaming me. The facts that I know and which appear in these papers further show me that one or more of the Martin defendants, which include Yottes, fabricated the plan to discredit me by a "phony book review," and the defendant Yottes thereafter contacted the defendant Jeffers and either "planted" with Jeffers a so-called "review" which attacked and defamed me, or explained to Jeffers how I was to be defamed and left Jeffers to compose the actual defamation. All of the evidence indicates to me that Jeffers was never at any time while he worked for WINS a bona fide book reviewer. Whether Jeffers was paid for his fake "book review"

or whether he did it as a favor for Yottes, I do not and can not know. One thing, however, is certain from all the facts, acting within the latitude that had been given him by the Westinghouse defendants, Jeffers broadcast a defamation and attack on me personally under the guise of a "book review" for the sole and express purpose of injuring me.

/s/ Mary Anne Guitar
Mary Anne Guitar

Verified October 21, 1974

AFFIDAVIT OF RALPH APPELBAUM, FOR PLAINTIFF, IN OPPOSITION TO MOTIONS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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(SAME TITLE)

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STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

I, RALPH APPELBAUM, being duly sworn depose and say:

1. I am a designer and I live at 148 Greene Street, New York, New York 10012. I make this affidavit in support of the plaintiff in this action and in opposition to defendants' motion for summary judgment.

2. On Sunday, December 17, 1972, I was driving to West Redding to visit my friend Reuben Eshkanian. I distinctly remember that while I was in the vicinity of the Avenue of the Americas and Tenth Street that morning listening to WINS on my automobile radio, I heard a broadcast of H. Paul Jeffers' review of the plaintiff's book, Property Power: How to Keep The Bulldozer, The Power Line, And The Highwaymen Away From Your Door, a copy of which review I have examined prior to making this affidavit.

3. My immediate reaction to the review was that the book appeared to be an ultraconservative, "far right" tract with the author telling dwellers in the suburbs and places like West Redding how to keep city people out and particularly,

in my mind, how to keep ghetto dwellers in the ghetto. Based on the review, I formed a most unfavorable impression of the book and its author.

4. When I arrived at West Redding that Sunday, I told Mr. Eshkanian of hearing the review and of my very unfavorable reaction to it. To my surprise, Mr. Eshkanian proved to be a friend of Miss Guitar's, and he told me that the book was not at all as it had seemed to me from the review, but was a book about proper zoning and planning. Mr. Eshkanian let me look at a copy of Miss Guitar's book, and after reading eighty or ninety pages, I found that I had formed a completely different opinion of her and her book from what I had reached at the time I heard Jeffers' review broadcast.

5. The review had seemed to me very vindictive and personal. It seemed to refer to a very reactionary book, but after reading the book, I had to conclude that there was something more to the review than just a fair appraisal of the book. There was nothing in the book that seemed to refer to "people against trees" or "trees against people," to use words that were used in the review. The book seemed to me to be a very fair treatise on how to conserve what is left of the environment. Contrary to what I had concluded from the review, I found nothing in the book that suggested to me that it was a document of exclusion. It seemed to me that Miss Guitar was trying to solve the problems of the city and of the country fairly and squarely,

AFFIDAVIT OF RALPH APPELBAUM, FOR PLAINTIFF,
IN OPPOSITION TO MOTIONS

not trying to push one thing off on the other.

s/Ralph Appelbaum

Verified October 17, 1974

AFFIDAVIT OF CAROLE DOLPH, FOR PLAINTIFF,
IN OPPOSITION TO MOTIONS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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(SAME TITLE)

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STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

I, Carole Dolph, being duly sworn, depose and say:

1. I am Promotion Director of the publicity Division of Doubleday and Co., Inc.

2. I am in charge of the distribution of books to reviewers. It is Doubleday's practice and, to the best of my knowledge and belief, the general practice and custom of the publishing industry, to provide free review copies of books to any medium that reviews books; such as magazines, newspapers, radio and television stations. We provide such books either on specific request by title or on our own initiative when we think the book will be of interest.

s/CAROLE DOLPH
CAROLE DOLPH

s/Samuel S. Vaughan

Verified October 22, 1974

AFFIDAVIT OF LIS HARRIS, FOR PLAINTIFF,
IN OPPOSITION TO MOTIONS

UNITED STATLS DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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(SAME TITLE)

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STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

I, LIS HARRIS, being duly sworn depose and say:

1. I make this affidavit for the plaintiff in this action and in opposition to the motion for summary judgment against her. I am a book reviewer for The New Yorker magazine and for the Village Voice, and I make this affidavit for the purpose of showing custom and practice in the book reviewing field with respect to procuring free review copies of books from publishers and the usual disposition of such books by book reviewers.

2. I first became connected with the publishing field in 1961 and have been continuously involved in it since that time. I have been involved in writing, editing and reviewing in various capacities, including having been a writer for the Children's Encyclopedia, a reader for Dell Publishing Company and a member of the staff of The New Yorker magazine. I am presently a staff writer for The New Yorker, and for the past two and a half years have been reviewing books for it. In addition I am Book Editor of the Village Voice and a book reviewer for the New York Times.

3. Based on my experience in the publishing and book

reviewing field, I believe that I am informed and aware of the customary and accepted practices in book reviewing and among book reviewers.

4. It is usual, customary and ordinary for the publishers of trade books to send free review copies of books to media that run book reviews. "Trade books" consist of novels, popular nonfiction and other books that are on general sale as opposed to texts, technical and specialized reference works. The plaintiff's book Property Power: How To Keep The Bulldozer, The Power Line, And The Highwaymen Away From Your Door is a trade book. The free review copies of books are in turn passed on by the medium to the book reviewer, who may or may not decide to review the book after reading it, depending upon his or her evaluation of its interest for review. A book reviewer ordinarily gets and expects to get for reading and possible review many more books than he or she actually reviews.

5. It is a recognized and accepted practice among book reviewers to sell to book stores at a discount all, or all but a few, of the free review copies of books that they are given. Book reviewer's receipts from these sales of free review books constitute an appreciable part of many book reviewer's incomes, and in my experience every book reviewer I know of receives and expects to receive this income from the resale of free review copies.

6. It is quite customarily the practice for book pub-

lishers to send out free review copies of books in advance of publication date and without solicitation to media who regularly run book reviews. In addition, in my experience, publishers are usually most agreeable to sending out free review copies upon request although it may be necessary on rare occasions for a medium or a reviewer to buy a book where the deadline for a review does not allow sufficient time for it to be received from the publisher, or where the publisher has temporarily exhausted his supply of free review copies.

s/ Lis Harris

Verified October 17, 1974

AFFIDAVIT OF PAUL KANEFSKY, FOR PLAINTIFF,
IN OPPOSITION TO MOTIONS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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(SAME TITLE)

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STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

I, PAUL KANEFSKY, being duly sworn depose and say:

1. I am a paralegal assistant in the office of Windels & Marx, attorneys for the plaintiff herein. I am a graduate of the University of Pennsylvania with a Bachelor of Arts in English, granted in 1966. In 1969 Harvard University granted me a Master of Arts in English. Before becoming a paralegal assistant, I have been a teacher of English on the secondary school level and an educational evaluator. I make this affidavit in support of the plaintiff and in opposition to the defendants' motion for summary judgment.

2. Exhibit R, annexed hereto and made a part hereof, consists of transcriptions of magnetic tapes. I am informed by J. Dennis McGrath, Esq., of this office that these are the tapes that were produced by the defendant Westinghouse Broadcasting Co., Inc. (Del.) ("Broadcasting") pursuant to order of this court as reproductions of all of the book reviews broadcast by station WINS up until the time of the broadcast review of the plaintiff's book. I have personally made these transcriptions by listening

to the said tapes, and I have compared the transcriptions to the tapes and certify that to the best of my knowledge and belief, possible typographical errors excepted, Exhibit R is a full, complete and accurate transcription of all such tapes.

3. In addition I have been able to establish the publication dates of Mazlish In Search of Nixon, Kobler Capone and Potter The Lost Years of Jesus, and I state that they are correctly set forth in the column headed "Pub Date" on the schedule entitled "Book Reviews by H. Paul Jeffers" which forms a part of Exhibit R. My sources for these publication dates are the reviews themselves and Publishers' Weekly.

4. I have carefully studied and analyzed each one of Jeffers' reviews prior to his attack on Miss Guitar. In a grand total of sixty-eight "reviews" of all types that Broadcasting has given us as the total of Mr. Jeffers' "reviewing" output prior to his attack on Miss Guitar, I found only five that had any sort of a comment that could even remotely be deemed a personal reference to an author:

a. On March 31, 1972 Robert Vaughn (Only Victims): " . . . smart-aleck approach."

b. On May 21, 1972 Bruce Mazlish (In Search of Nixon: A Psycho-Historical Inquiry): "A lot of baloney"; "A lot of nonsense."

c. On October 31, 1971 Roger Rappaport (The Great American Bomb Machine): "Mr. Rappaport's solutions to these

problems are poppycock."

d. On April 29, 1972 Gore Vidal (Play, "The American Empire"): ". . . corrupted vision of Gore Vidal."

e. On August 7, 1972 Jonathan Livingston Seagull by Richard Bach: "Jonathan Livingston Seagull is a rip-off."

5. From my examination of the back lists of "best sellers" which runs in Publishers Weekly, I have been able to find only eight "best sellers" out of the sixty-five different books that the defendant Jeffers reviewed from October 1971 through December 1972. The eight "best sellers" that were included among the sixty-five books Jeffers reviewed were:

Capone
The Winds of War
Tracy and Hepburn
Honor Thy Father
The Moon's a Balloon
Jonathan Livingston Seagull
Report to the Commissioner
George S. Kaufman: An Intimate Portrait

6. Exhibit W is a copy of a reproduction of the July 28, 1970 number of the Wall Street Journal made by me from microfilm at the New York Public Library.

Paul Kanefsky
Paul Kanefsky

Verified October 23, 1974

AFFIDAVIT OF PAMELA R. WINNICK, FOR PLAINTIFF, IN OPPOSITION TO MOTIONS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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(SAME TITLE)

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STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

I, PAMELA R. WINNICK, being duly sworn depose and say:

1. I am a first-year student at the law school of Columbia University. I hold a Bachelor of Arts degree in English from State University of New York at Buffalo, and I received a Master of Arts degree from the University of Virginia. From the summer of 1973 through the summer of 1974, I was employed by the firm of Windels, Merritt & Ingraham and its successor, Windels & Marx, attorneys for the plaintiff herein, in the capacity of paralegal assistant. I make this affidavit in support of the plaintiff and in opposition to the defendants' motion for summary judgment herein.

2. At the request of Mr. Knapp I reviewed the material produced by Westinghouse Broadcasting Co., Inc. (Del.) for the plaintiff, pursuant to the order of this court, covering all the book reviews by the defendant H. Paul Jeffers during his employment by the defendant broadcasting company. I was asked to establish the publication dates of each book that the defendant

AFFIDAVIT OF PAMELA R. WINNICK, FOR PLAINTIFF,
IN OPPOSITION TO MOTIONS

Jeffers had reviewed. With the exceptions noted below, I have done this by examination of back copies of Publishers' Weekly, the trade publication of the book publishing industry; by inquiries to publishers and libraries; and by listening to the tapes of the reviews themselves.

3. Again, with the exceptions noted below, I certify that the dates that appear on Exhibit R in the column headed "Pub. Date" and the notations in the column headed "Occasion for Review" are to the best of my knowledge and belief true and correct and have been established by me through the research and inquiry that I have undertaken as stated above. In the cases where Jeffers' review did not state the publisher, I have established the publisher by the same means. The date of review, author and title have been taken from the material furnished by the defendant broadcasting company.

4. As appears in the accompanying affidavit of Mary Anne Guitar, publication date of August 1971 for the reissue of Everson A Pictorial History of the Western Film was obtained by her through inquiry and Publishers' Weekly. As appears from the accompanying affidavit of Paul Kanefsky, publication dates for Maclish In Search of Nixon, Kobler Capone and Potter The Lost Years of Jesus Revealed were obtained by him.

S/Pamela R. Winnick

Verified October 18, 1974

EXHIBIT A TO PAPERS IN OPPOSITION TO MOTIONS - TABLE OF DEFENDANTS' PLEADINGS TO PARAGRAPHS OF COMPLAINTS

TABLE OF ALL DEFENDANTS' MARKED PLEADINGS TO THE SECOND AMENDED COMPLAINT OR THE COMPLAINT IN ACTION 73 CIV 5287--SCHNEIDER AND LLOYD--NOW CONSOLIDATED AS 73 CIV 161

Legend: "A" - "Admit"
"D" - "Deny"
"DKI" - "Denies knowledge or information sufficient to form a belief"
"ex" - "Except"
"R & R" - "Repeat and reallege"

The paragraph numbers refer to the paragraphs of the second amended complaint and the complaint in 73 CIV 5287 (herein "Action #2--Schneider-Lloyd").

Second Amended Complaint	Robert Martin Berger Weinberg	Westinghouse Electric Broadcasting Jeffers	John Yottes	Action #2 Schneider Lloyd	Schneider & Lloyd
Par. 1	DKI	DKI	DKI	1.	DKI
2	DKI	A	DKI	2.	DKI
3	DKI	D ex A denies "controlled and dominated" and "acted on behalf of Electric"	DKI	3.	DKI
4	DKI	D	DKI	4.	DKI
5	A	DKI	DKI	5.	A
6	D	DKI	DKI	6.	D [in concert ex A [the rest
7	A	DKI	DKI	---	---
8	DKI	DKI	A	---	---
9	DKI	D	D	7.	DKI
10	D	DKI	D	8.	D ex A Yotte independent contractor fo pub. rel.

EXHIBIT A TO PAPERS IN OPPOSITION TO MOTIONS - TABLE OF DEFENDANTS' PLEADINGS TO PARAGRAPHS OF COMPLAINTS

econd mended omplaint	Robert Martin Berger Weinberg	Westinghouse Electric Broadcasting Jeffers	John Yottes	Action #2 Schneider Lloyd	Schneider & Lloyd	Se A: Co
11	DKI	DKI ex A Elec. is Pa. corp Broadcasting-Del. Jeffers - N.Y.	DKI	11.	DKI ex A defendants citizens of N.Y.	
---	---	---	---	9.	A	
---	---	---	---	10.	D ex A Schneider personal sec. & Lloyd V.P.	
Par. 11	DKI	DKI ex A Elec.-Pa. Broadcasting-Del. Jeffers-NY	DKI	11.	DKI ex A defendants NY citizens	
12	DKI	DKI	DKI	12.	DKI	
13	DKI	DKI	DKI	13.	DKI	
14	DKI	D ex DKI [between citizens of different states]	DKI	14.	D	
	FIRST CAUSE OF ACTION: Martin, Weinberg, Berger, Yottes			FIRST CAUSE OF ACTION:		
15	D ex A [admits all but "build"]	DKI	D	15.	D	
16	DKI	A 12/17/72 review by Jeffers of plaintiff book D rest.	DKI	16.	DKI	
17	DKI	A book had 1972 publishing date DKI rest	DKI	17.	DKI	

EXHIBIT A TO PAPERS IN OPPOSITION TO MOTIONS - TABLE OF DEFENDANTS' PLEADINGS TO PARAGRAPHS OF COMPLAINTS

Second Amended Complaint	Robert Martin Berger Weinberg	Westinghouse Electric Broadcasting Jeffers	John Yottes	Action #2 Schneider Lloyd	Schneider & Lloyd
18	DKI	D	DKI	18.	DKI
19	DKI	A - Jeffers published the words. D the rest.	DKI	19.	DKI
20	DKI	D	DKI	20.	DKI
21	DKI ex A RMC distributed fact sheet at planning Bd. meeting 12/20/72	D'.I	DKI	21.	D
Par. 22	D	D	D	22.	D
23	D - and circular speaks for itself	A	D & circular speaks for itself	23.	D
24	D	D	D	24.	D
25	D	D	D	25.	D
26	D	D	D	26.	D
27	D	D	D	27.	D
	SECOND CAUSE OF ACTION: Electric, Broadcasting, Jeffers, Yottes			SECOND CAUSE OF ACTION:	
28	R & R	R & R	R & R	28.	R & R
29	DKI	D	DKI	29.	DKI
30	DKI	A ex Jeffers DKI	DKI	---	---
Par. 31	DKI	A-Jeffers published the words D-the rest	DKI	---	---
32	DKI	D	DKI	---	---

EXHIBIT A TO PAPERS IN OPPOSITION TO MOTIONS - TABLE OF DEFENDANTS' PLEADINGS TO PARAGRAPHS OF COMPLAINTS

econd mended omplaint	Robert Martin Berger Weinberg	Westinghouse Electric Broadcasting Jeffers	John Yottes	Action #2 Schneider Lloyd	Schneider & Lloyd
33	DKI	D	D	30.	DKI
34	DKI	D	DKI	31.	D
35	D	D	D	34.	D
	THIRD CAUSE OF ACTION: All defendants			(NO THIRD CAUSE OF ACTION	
36	R & R	R & R	R & R	---	---
37	D	D	D	32.	D
38	D	D	D	33.	D
39	D	D	D	34.	D

EXHIBIT G TO PAPERS IN OPPOSITION TO MOTIONS -
SCHEDULE OF PLAINTIFF'S INCOME

mary anne guitar
tax breakdown 6/27/73

1966 -- American Home -- Special Issue on the Future 9/66
$4,000.00

-- American Home

Special Issue on Space Control -- Environmental Design
"The Subject Is Space
Why Settle for Less"

$2500.00

Special Issue on Leisure April/67 -- Design emphasis

$2500.00

1968 -- American Home

"Coping With the High Price of Land" lead 3/69

"How You Can Save the Land We Love" 3/69
$1,500.00 (Reprinted as "The Vanishing Landscape" by Catholic Digest 8/69)

Special Issue on the "Mobile Society" Winter/69
$1,750.00
~~$1,500.00~~
This included unsigned piece titled:

"How to Find the Perfect Fit in Housing"

1969 -- American Home

"The Turnaround Year" 11/69

$1,000.00
"Hackettstown is for the Birds" 9/69
$750.00
"Tranquilize Your House" 10/69
$750.00

Consultant work on environmental stories
$400.00

New York Times

Land Trusts ~~12/14/69~~ 2/2/69 -- $100
Conservation Commissions 12/14/69 -- $100

EXHIBIT G TO PAPERS IN OPPOSITION TO MOTIONS -
SCHEDULE OF PLAINTIFF'S INCOME

guitar-tax-2

1970 -- Reader's Digest

"Teach-In to Save the Earth" 4/70

$2,000.00

Story on Nature Centers (unused)

$600.00

Doubleday

Advance on "Property Power: How to Keep the Bulldozer, The Power Line, and the Highwaymen Away From Your Door"

$3,000.00

Good Housekeeping--Hearst

"Rx for Philip"--5/70--on Lead Poisoning

$1,500.00

Mlle. (Conde Nast)

"Ecology: New Cause, New Career" 4/70

$750.00

Downe

"Childrens Crusade" -- Nature Study
$250.00

Research on Aerosol Bomb
$100.00

New York Times

"Perceptive Eyes on the River Bank"--Nature Study 2/22/70
$100.00

"Amateur Expertise with Alpines" --Gardens 8/23/70
$100.00

EXHIBIT G TO PAPERS IN OPPOSITION TO MOTIONS -
SCHEDULE OF PLAINTIFF'S INCOME

1971 -- Doubleday guitar-tax--3

Advance on "Property Power: How to Keep the Bulldozer, the Power Line, and the Highwaymen Away From Your Door"

$2,500.00

National Wildlife

Article on Land Trusts (unpublished so far)

$400.00

Pools and Gardens

"Saving the Landscape" mid-summer issue

$350.00

Reader's Digest

Reprint of Pools&Garden piece

$140.00

1972 -- Conde Nast -- Mlle.

"An Insider's Guide for the Political Innocent" 6/72

$750.00

County Magazine

"Right Through My House" (on battling highwaymen) 4/72
"Power to the People" (on fighting a giant power line) 5/72
"This Land Belongs to You and Me" (on saving openspace) 6/72
$/[illegible]c

Pools&Gardens

"Why Save the Wetlands" Fall/72

"Does Your Town Have a Nature Center" (unpublished)

$550.00

1973 -- Reader's Digest

"Frederick Law Olmsted--Our First Environmentalist".
$2,000.00
"Lenox" - assigned fall '72 - still in writing stage.

Fairfield County

"The New Natural Look in Swimming Pools" (for ecological benefi

$[illegible].00

2/73

EXHIBIT L TO PAPERS IN OPPOSITION TO MOTIONS - NOTES OF DEFENDANTS LLOYD AND SCHNEIDER AT MEETING DECEMBER 13, 1972

DRAFT

NOTES AT MEETING OF SAVE IRVINGTON COMMITTEE, IRVINGTON HIGH SCHOOL

DECEMBER 13, 1972.
MC No. 1. Dr. Zinman

MC No. 2. Mr. Schlittenheimer (?)

Mrs. Zinman shared the meeting. Mr. Schlittenheimer periodicall summarized. Dr. Kandriga from Yorktown did not make it to the mee

Maryanne Gytar. I want to congratulate you. Hope you all show up on the 20th. I consider my role to be to do a little consciousness raising to make you all feel less guilty. When you bought you bought more than a house you bought an environment and you are entitled to it. This tract is the last piece of green you have. You must preserve it at all costs.

Don't feel guilty - don't let them make you feel guilty. You have equity in your environment. You have some rights - don't let an outsider take them away from you. Developers should be forced to live in this kind of mini-city, to be punished for their wrong doing.

But be careful. Don't force the board to take positions that might leave it open to court challenge. You must do what you must do in such a manner that the developer has no chance to challenge you in court.

You will never again have the opportunity that you will get on the 20th of December. I am egging you on to see that you make it count.

EXHIBIT L TO PAPERS IN OPPOSITION TO MOTIONS - NOTES OF DEFENDANTS LLOYD AND SCHNEIDER AT MEETING DECEMBER 13, 1972

It is better to pay money now for open space than pay taxes later. You are not alone. Other people save something almost every day. The more pleasing the landscape the more likely neighbors will fight for it. The landscape saves itself. You can form a land trus buying the land may be cheaper.

Edward Finnegan. Assessables are not asolution. Just look at the marine terminal in Dobbs Ferry. Now we face the spector of a gasoli terminal. Builders never did what they promised. Apartments sneak in at Marguery Manor and now it's taking the police to straighten out the mess. 115 homes were proposed for the Juhring piece, which we purchased for a park. The first step is to fight the building proposal to gain time. Then go for state and federal aid and get the funds. We also went to HUD. Eventually we had pledges of more money than we needed. But block the re-zoning first. The Juhring piece cost $450,000, of which $390,000 were given by the federal government, $60,000 by the Village. Now we own a piece of land worth one and a half million.

George Case. I am one who has seen the light. We can win as we won against the highwaymen. I will disagree with you on some things I am not a lawyer and therefore feel free to give you my legal comments. If you want to change zoning there must be a petition, then a recommendation from the planning board, then a public hearing before their final decision is made. The only thing so far delivered to the Town is a set of study documents. No. 1 to create a zone, No. 2 to apply it. The hearing on the 20th is not a public hearing as above. There must be a specific public

EXHIBIT L TO PAPERS IN OPPOSITION TO MOTIONS - NOTES OF DEFENDANTS LLOYD AND SCHNEIDER AT MEETING DECEMBER 13, 1972

MC #2 . This new zone will probably triple golf course values and accelerate development there.

Maryanne Gytar. George Case is right in calling for an environmenta impact study. It is a brand new fashionable thing. It is the thing to ask for. Another good thing to ask for is what will it do to the infra structure. Throw the lingo at them and throw the jargon around. Make them do the homework.

MC No.2 We have already been pledged support from the council of Greenburgh's Civic Associations. ~~There are allegations~~

Question: There are allegations that opposition to this housing is undemocratic. I would rather see the land fallow. Could you comment.

Maryanne Gytar. It is not undemocratic. The developer's tactics are the hit and run ethics of the frontier. We should keep the plants in the cities. Everybody would be better off. We can be the green belts for the denser areas. Let's not move the city to the country.

Anthony Puma. It is not undemocratic to speak up for my rights.

Question: The press is suppressing the story of Marguery Manor.

EXHIBIT L TO PAPERS IN OPPOSITION TO MOTIONS - NOTES OF DEFENDANTS LLOYD AND SCHNEIDER AT MEETING DECEMBER 13, 1972

Degnan Walker. Several lights will be required particularly for the new Masters shopping center on Taxter. We will need sidewalks, we will need signs and street lights and fire alarm boxes. You jus go on and on and on.

Question: I understand Manhattan's average density is 8,100 peopl per square mile. If Tony Puma is correct on 40 units per acre, it comes out to 160 persons per acre, times 640 acres per square mile, is 115,000 people per square mile, higher than the average density of Manhattan.

Anthony Puma. That was beautiful.

Maryanne Gytar. New YorkCity has more open space than Irvington. Irvington only has a few acres of park. It needs at least one quarter of its land mass.

Question: Each one here should resolve to call at least 10 other families. Applause.

Question: Why is zoning the cause of exclusion.

George Case. Builders don't like zoning because it regulates. It does control people, but it also controls structure. Zoning is not important. Cost of home construction is more important. Financi is more important. Zoning can be straightened out. The problem is is the tax structure. It does not make for responsive local

government. We can't change those things. You have a perfect right to exclude if you want to. I have to fight with the county all the time. They say that there are no good tracts for green space, but I have objected. Here we have 177 out of over 500 acres for which we can say that it should be in public use.

Maryanne Gytar. Robert Martin like other developers always talk about how their land should develop because it's near major highways. That's like saying, since it's loused up already, let's louse it up some more.

Ted Mack: (with a general question about what can the county do.)

George Case. The county could do something, the county could be forced tohold environmental impact hearings. The county could not really resist a powerful call. In spite of the shortage of personnel the Hudson River Valley Commission could be called in and would have to take a stand.

Degnan Walker. The Irvington Fire Department would be a thing of the past. There would have to be a new fire company in the development. Just think of New Orleans where people had to jump to their death from windows. A new truck costs $70,000, plus a new building, that's over $200,000. It would need 32 men (8 officers at $17,000 per year, and firemen at $12,000 per year, or $400,000 annual wages for firemen. They must buy telecommunication systems and pull-box alarms and before we know it it will be a $750,000 bill. There must be more police for that project with salaries and pensions. From an engineering point of view they will

EXHIBIT L TO PAPERS IN OPPOSITION TO MOTIONS - NOTES OF DEFENDANTS LLOYD AND SCHNEIDER AT MEETING DECEMBER 13, 1972

Panel: Guitar, Finegan, Case, Walker, Schletleimer, Puma

Tarrygreen shopping center was compared to Masters Shopping Center citing that as a result of the urbanization of the Elmsford area, 9A will requires widening (at taxpayers expense) "When you think of going to the new shopping center, first picture yourself in the Masters parking lot."

RMC left out the people working in the development (industrial, shopping center, motel employees, etc.) when they came to population density figures. Counting these people the population/commuter density would be over 10,000 people.

RMC also never talks about the truck traffic that will come as a result of the industrial/commerical space

"Roads are the biggest problem RMC has"

If the roads were widened residents would not only pay tax but would also face condemnation of their homes since many homes front directly on the road.

Ms. Guitar said she was there to help the people feel "less guilty" about trying to block the proposal. She told them that showing up at the December 20 meeting is the way they would make their "dent" and make the politicians sit up and take notice.

X "You must preserve the greenry.... We have to think of yourselves and the next generation..."

Mr. Finegan cited what happened with Marguery Manor in Dobbs Ferry - what started out as a hi-rise turned into a hornets nest that requires daily visits from the Police and Health Department. He urged the people to get their Village Trustees to apply for State and Federal Aid (or any other kind they can get). He said that the people themselves would have to do the ground-work and then the politicians and HUD will go along. Under the new bond issue, there is open space money available. Show your councilmen you have voting power. Sue Miller (East Irvington. resident in the audience) said that if RMC couldn't get the rents and the people for the "High rise" they could apply for and probably get state assistance (implications of welfare people not wanted)

Case said that the Meeting on the 20th is not the last hope, there would probably be two more after that and the people should not stop giving up hope. Tarrytown is worried about the drainage problem and Sheldon Avenue connection to Broadway (an area which cannot be signalized).

EXHIBIT L TO PAPERS IN OPPOSITION TO MOTIONS - NOTES OF DEFENDANTS LLOYD AND SCHNEIDER AT MEETING DECEMBER 13, 1972

"Tarrytown in its right mind would never consider such a road link"

Case also brought out the theater proposal on Rt. 119. Everyone agreed that RMC is right in saying that other proposals in the area are not their concern, but the people have to be concerned ~~xxxx~~ about all proposals.

Case said "Town of Greenburgh is not interested in the people of East Irvington and that's evident" If the Town of Greenburgh is going to study any proposal it should be studied with the Village Boards of Irvington, Tarrytown, Elmsford and all the residents involved. "W[illegible]ou go to the meeting, demand that there be an environmenta[illegible]act study by the village, town, state and federal governments"

Mr. Candreva cancelled

There was another man on the panel, I think his name was Schletleimer he kept referring to the mid-rise as "high rise" and said that "this is a zoning concept that will destroy the zoning". He said he checked with the Irvington ~~X~~ Board of Ed and that RMC's child projections were in error there will be a minimum of 1,325 additional children in the Irvington School district. The orderly development of this area has been going on for 100 years and is now being threatened by one greedy developer.
Puma made a speech which totally distorted the population/children figures. By the time he was through, there would be at least 42-50,000 people (6-8 times the pop. of Irvington, 3-4 times Tarrytown and ½ the pop. of entire Town of Greenburgh. "nobody is against housing, but this is ludicrous" "RMC has stated that the project will take 5-8 years to complete and the people who don't like it can move or relocate, I choose to stay and fight".

"Manasaw proposed the Master Plan,
RMC proposes the Master Plot,
for one reason, money"

"Weinberg has stated that the citizens of Irvington are idiots and cannot stop him, we the idiots choose to stay and fight" "RMC will not be able to dream another dream, how to rape and plunder another community"

During the question and answer period it was repeated again and again by Guitar and Case that the people must ask, rather demand for an ~~xxxx~~ environmental impact study.

Guitar said the people must do their homework, if the politicians do not do theirs, sue.

Guitar said let's use the land already set up for this (brought out Bridgeport), let's not move the city to the country.

EXHIBIT M TO PAPERS IN OPPOSITION TO MOTIONS -
PAGE 184 OF MADEMOISELLE FOR JUNE 1972



GRETCHEN KLOATE

Fashion Beat

SKIVVY 'N SHORTS

In the sunniest summer colors—a scooped-out orange skivvy butterfly'd with braid (Banlon knit, S,M,L, $10) and the shortest little hot yellow cotton duck shorts (3–13, $10). It's enough to put a smile on your face when the sun's *not* out. By Jim 'n Me. At: Stuff to Wear, Cocoa Beach, Merritt Island, Tampa, Winter Park; Leon's, Montgomery, Alabama.

school. She dropped out of Boston U., where she was a music major, to get married, and now at 30 is well launched on a career in which she hopes to specialize in legal aid to juveniles.

She is also black in a community dominated by whites and a relative newcomer at that. Her opposition in the race, four other candidates, had all lived in Sharon for at least 20 years. Yet, when the count was in, Jane had won by the biggest plurality ever tallied in Sharon for the School Committee.

How did she do it?

By concentrating on a single issue: were the schools, with all their fine facilities and devoted faculty, really doing right by the kids? As one supporter told her, after a League of Women Voters candidates' meeting, "The others were talking about taxes and curriculum but what kept coming across was that you cared about the kids."

She does, too. And the kids were her best campaigners. "They walked the streets with me. We covered all of Sharon on foot, talking to people and handing out flyers."

The flyers spelled out her campaign promises, the most important of which was a strong bid to open up communication between parents and teachers and students. Jane had opened doors for herself by persisting in an effort to find out what was happening in the schools. She was confident that she could do the same for other parents.

The first ad she ran in the local paper described her credentials and platform. The second ad was pure political inspiration. It read: "I've told you what my concerns are. Please tell me yours." Overnight she was mobbed with calls and, naturally enough, offers of support.

Election night she wouldn't watch the ballots being counted. Instead, she came home (after standing outside the polls all day, doing last-minute campaigning) and waited for the results. "I had put everything inside me into that campaign," she explains. "I just couldn't go up there."

What she put into the campaign was her own time and considerable energies. Fund-raising was left to her volunteer workers. She says she spent about $250 for ads and buttons. On election night the kids started sporting buttons ("Jane is a Dark Horse Candidate") she had been reluctant to use until that moment.

My own campaign cost $178.10, spread over 14 donors, and if a friend from Chicago who had worked at her brother's political headquarters hadn't sent me $25 "for buttons," it wouldn't have occurred to me that I would need any cash at all to run. Then, after some of my more inspired constituents began dreaming up such slogans as "String Along with Guitar . . . She's in Tune with the Times," I began to see the possibilities in advertising. You can run, of course, without raising a dime because the press will cover your campaign if you succeed in making news. However, it is not all that difficult to raise money, in donations up to $25. You should give the donors some idea of how the money is going to be spent—buttons, advertising, mailings. Kennedys to the contrary, most candidates do not put their own money into their campaigns.

Money isn't the essential ingredient in a successful campaign. What counts is whether you can get people to work for you. How do you persuade them? That's like asking, how do you make friends. You just assume that they will want to if you project the kind of campaign that appeals. (It won't be long before you'll know whether or not you have the appeal. If nobody volunteers to help, you would be well advised to get out of politics.)

You have to speak up for yourself and your ideas. Ideally, you demonstrate what you could accomplish given the powers of office. I had been a strong advocate of land preservation, been vocally opposed to "mindless growth" and left little doubt that, if elected, I would be happy to throw sand in the wheels of "progress."

Naturally, you can't just protest the system. You have to come up with bright ideas to change it, alternative proposals. You have to lay out a platform. The more you develop your ideas, the easier it is for people to believe you are a real, live candidate, one worth working for.

Voters also seem to have an affinity for the underdog. They like to help one win if, that is, the cause isn't completely hopeless. Some of this year's campaigners won simply because they were young, and the idea of staging an upset appealed to their supporters.

Other young candidates who thought they had an unbeatable issue in their age discovered that people were not willing to vote for youth *per se*. "The voters are beginning to listen, but it may take a while before they're ready for us," 18-year-old Yvonne Westbrook concluded as she campaigned hard for the San Francisco Board of Supervisors. She had no trouble getting into the campaign. "No one wanted to attack an 18-year-old this year. The politicians treated me well. But a lot of people began to look at me as only a youth candidate, and there are a lot of people over 30 with problems who vote." P.S. She lost.

Election returns around the country indicate that it doesn't matter so much whether you are a young candidate or not. What does matter is the way you project "credibility." Says a young winner, "You must be totally honest with people. You don't have to agree with everybody but you can listen sympathetically. You can say, 'I appreciate your point of view, but on this issue I don't agree with you.'"

What politics amounts to, finally, is asserting yourself, putting yourself forward and, yes, demanding attention. It's one thing to ring doorbells for Gene or George. That's surrogate politics. Real politics is getting out there yourself. Risking it. Winning. Everybody should try it at least once.

Mary Anne Guitar has put her experiences and expertise as a conservationist into a guide for environmental activists: Property Power, *published this month by Doubleday.*

EXHIBIT P TO PAPERS IN OPPOSITION TO MOTIONS - EXCERPT FROM PUBLISHERS WEEKLY JULY 30, 1973

Guitar

PW INTERVIEWS:



Bill Johnson

Stanton Peckham

The book review editor of the Denver *Post* says: "Denverites want to read reviews by other Denver people with whose names they are familiar. They don't go much for celebrity reviewers"

A few Christmases ago, *PW* polled by telephone a number of book review editors around the country, asking how the holiday book business looked in their locales. Two of the more prestigious Eastern Establishment review editors replied with notable shock in almost the same words. "You mean you want to know what's *selling*? I wouldn't know. I stay as far away from bookstores and booksellers as possible."

No such statement ever could or would be made by Stanton Peckham, book review editor of the Denver *Post* since 1958. To an extent that is unique among his fellow regional reviewers, Mr. Peckham has made it a point from the beginning to be totally involved with every aspect of the book scene in and around Denver.

He is personal friend to dozens of Colorado booksellers, publishers' reps, local wholesalers and small regional publishers. He is active in the Friends of the Denver Public Library. It was Stan Peckham's contacts with many areas of the book industry that provided the guiding spark behind the Rocky Mountain Book Festival in 1968, a three-day affair that drew a public attendance of 53,100 and brought about 50 authors to Denver to address their reading public.

"The first thing I did in taking on the job of book review editor at the Denver *Post*," Stanton Peckham told *PW* recently, "was to start attending all the meetings of the Colorado Booksellers Association (now the Rocky Mountain Booksellers Association), and I list my membership in the booksellers' group in my bio in 'Who's Who.' I'm proud of it."

Any local or national book trade news angle that he thinks may be of interest to the general reader is passed along weekly by Stan Peckham in the Sunday book column he writes for the *Post*. Denver residents can be certain of learning from Stan Peckham about the existence of any new Denver bookshops and their specialties. A local paperback wholesaler's list of best sellers, reflecting actual orders by Denver stores, appears in the *Post* once a month. Advance announcement is given there of all upcoming book and author luncheons and dinners and other local author appearances. Books that look especially exciting to Stan, for a Denver audience, are announced in the *Post* in advance of publication, reviewed later.

The Denver *Post* book section runs "no less than three pages every Sunday" in the same weekly magazine supplement that includes travel, theater, movies, photography and art and dance news. There are also book reviews throughout the week in a "Critics' Corner" section that runs opposite the editorial page of the paper. Stan Peckham estimates that, in all, the Denver *Post* reviews about 30 books a week, including those that Mr. Peckham sends along to other editorial departments of the paper (sports, women's page, art, theater, etc.). "I want all the books for review sent to me. I'll pass them along," he emphasizes. "That's the way I steal space for more books from other departments. I love bound galleys as far ahead of publication date as possible."

His commitment to the Denver scene is such that it is easy to take Stan Peckham for a native Coloradoan. Actually, he was born in Kansas City, picked a prep school in Minnesota because he wanted to become editor of the school paper there (he did) and ended up in the beginning of the Depression years going to the University of Kansas instead of the planned-for Harvard.

On entering the U. of Kansas he had a chance to ask the notable newspaperman William Allen White about chances of a journalism career.

"If you want to be a newspaperman, stay out of journalism schools," White advised him. "You can learn as much in two weeks on a paper as you can in two years at a school of journalism." "The only thing he didn't tell me was how many years it might be before I could get a job on a paper," says Stan.

Peckham's newspaper career did not begin until after a few years in the foreign service in South America (Venezuela and Chile). "I was the last vice-consul appointed by Herbert Hoover," he recalls, "and the first summer I was back from South America I was living in Macon, Georgia, where I wrote my first book review. I remember hearing about an Atlanta girl who was writing a Civil War novel and predicting that it would never sell under the title of 'Gone With the Wind.'"

From various editing jobs in the educational field Stan Peckham came to *Newsday* when that Long Island newspaper was just being started by the volatile Alicia Patterson, daughter of Joseph Patterson, founder of the N.Y. *Daily News*. "Alicia," Stan says, "was the last great entrepreneur of the personal journalism school and she taught me a lot." From

EXHIBIT P TO PAPERS IN OPPOSITION TO MOTIONS - EXCERPT FROM PUBLISHERS WEEKLY JULY 30, 1973

Guistar

being editorial page editor of *Newsday* he went to the Denver *Post* in 1952 as an editorial writer, making his first notable mark there when he wrote a very pro-Adlai Stevenson editorial that Stevenson himself read on a national TV show. It was from the editorial page of the Denver *Post* that Stanton Peckham moved six years later to the book section.

"The first thing I do every day on the paper is open the mail and distribute the books around," Mr. Peckham says. "I must donate $10,000 in books a year to Metropolitan State College Library, a new community college. One thing I am convinced of. In a Denver newspaper it would not attract any attention to run book reviews by such big international names as Kurt Vonnegut, Jr., or Malcolm Muggeridge. Barbara Sudler, Ved Nanda and others of my local reviewers sell books here. Denverites *want* to read reviews by Denver people with whose names they are familiar. They don't go much for celebrity reviewers. Most of my best local reviewers turn out to be people I have met socially. I try to give the best books to other people, asking my reviewers to come into the office and browse just as if they were in a bookstore. I'm very conscious of that lead book review every week. I don't want my own or any one other person's review to run as the lead two weeks in a row. What I'm trying to do, basically, in the Denver *Post* is to get more people to read more books and buy more books. I do not give a damn what they read. Even if it's junk, they are reading books and their taste will improve."

Although Stan Peckham regularly runs Morton's list of paperback best sellers in the *Post*, using that wholesaler's actual report of orders, he was one of the first book review editors, some years back, to drop any weekly hardcover best seller lists. He did it when he discovered that a fine book with a great deal of regional Denver sales interest was never being reported by a key local store, despite the fact that the author had just had a highly successful Denver autographing party there. "Instead, the buyer at the same store was listing his own far less salable book as a big seller when it wasn't selling at all," he discovered. "That was the day I decided to drop any best seller list from the Denver *Post*. You can't believe a thing you're told unless you see reports of actual orders."

BARBARA A. BANNON

LETTERS

A PROPOSAL FOR THE RAISING OF GLASSES TO ROYSCE SMITH

EDITORS, PUBLISHERS WEEKLY:

Now that the ABA convention has passed and all the shouting is over, let us raise our glasses in a toast to Royce Smith of the ABA.

I have been attending the ABA convention for a good many of my 27 years in the industry, but this is the best I've seen. Missing was the chaos of the public address system, the long lines in the middle of the aisles waiting for autographs, the multitude of visitors who were not in the book business, and the general disorganization. The changes in the ABA and the scheduled program for the future indicate that our new Executive Director has been doing a fantastic job.

We salute you, Roysce! Keep it up.

LOUIS EATON
Brooke House Publishers
Northridge, Calif.

BICENTENNIAL BOOKS: ANOTHER PUBLISHER HEARD FROM

EDITORS, PUBLISHERS WEEKLY:

I read Raymond Walters's article on Bicentennial publishing plans (July 2) with great interest and some surprise. Surprise, because it seems odd that in checking about plans for publications related to the Bicentennial he did not check with American Heritage Publishing Company. Although I share the skepticism of many of my publishing colleagues as to the level of attention which will be paid to celebration by the people of our country, American Heritage has been exploring our unique history for 20 years and still has plans to publish in this field in the future.

Among the major subjects we will deal with in the next two years are a History of the Law in America and a History of the Congress. Both are subjects which current events suggest should be of particular interest to the public. We are not certain, of course, of repeating earlier successes that publications dealing with the Civil War had, but I should point out an error in your article, namely that none of the books dealing with the Civil War published around the time of its Centennial reached the best seller list. In fact, Bruce Catton's "The American Heritage Pictorial History of the Civil War" did show up on the New York *Times* best seller list for 19 weeks, and we were proud to publish it in conjunction with Doubleday, who distributed copies to the trade.

PAUL GOTTLIEB
President, American Heritage
Publishing Company
New York

Mr. Walters replies: As a matter of fact, when gathering material for the article, I did address an inquiry to Ameri-

EXHIBIT R TO PAPERS IN OPPOSITION TO MOTIONS - TABLE OF JEFFERS' BOOK REVIEWS FOR WINS

BOOK REVI

Date of Taping	Pub. Date	Publisher	Aut
10/9/71	3/16/70	W.W. Norton	John Linc
10/16/71	10/8/71	Atheneum	Victor S.
10/24/71	8/71	Citadel	William
10/31/71	11/8/71	Dutton	Roger Ra
11/14/71	11/1/71	Holt, Rhinehart	Lyndon B
11/18/71	11/10/71	Viking	Garson K
12/2/71	(10/7/71 Random)		(Evans &
	( )		(
	(11/19/71 Doubleday)		(Allen Dr
12/10/71	(10/4/71 World)		(Gay Tale
	( )		(
	(10/4/71 McGraw)		(N. Gage
12/16/71	10/20/71	Simon & Schuster	Avery Co
12/24/71	10/25/71	Dodd, Mead	W.C. Fie
1/15/72	11/10/71	Playboy	Andrew T
1/22/72	11/22/71	Alfred A. Knopf	Richard
1/25/72	11/15/71	Little, Brown	Herman W

IEWS BY H. PAUL JEFFERS

thor	Title	Occasion for Review
dsay	The City	Lindsay had just switched parties.
. Navasky	Kennedy Justice	New book.
K. Everson	A Pictorial History of the Western Film	New paperback edition.
ppaport	The Great American Bomb Machine	New book.
. Johnson	The Vantage Point	New book.
anin	Tracy and Hepburn: An Intimate Portrait	New book.
Novak)) ury)	Nixon in the White House)) Courage and Hesitation)	New books.
se)))	Honor Thy Father))	New book.
	The Mafia is Not an Equal Opportunity Employer)))	New book.
rman	Oh, God	New book.
lds	Fields for President	New reprint of 1938 book for election year
Tobias	The Funny Money Game	New book ties in with Wall St. news item.
M. Freeland	The Truman Doctrine and the Origins of McCarthyism	New book ties in with Nixon inaugural address
Wouk	The Winds of War	New book

EXHIBIT R TO PAPERS IN OPPOSITION TO MOTIONS - TABLE OF JEFFERS' BOOK REVIEWS FOR WINS

Date of Taping	Pub. Date	Publisher	Author	Title	Occasion for Review
2/5/72	Eulogy for Marianne Moore who died that day				
2/12/72	11/15/71	Playboy	Henry Miller	My Life and Times	New book. Tie-in to Howard Hughes "autobiography"
2/18/72	Parody review of Income Tax Form 1040				
3/11/72	1/20/72	Putnam	David Niven	The Moon's a Balloon	New book.
3/18/72	2/28/72	Dodd, Mead	Michael M. Mooney	The Hindenburg	New book.
3/24/72	3/14/72	Random	Louise FitzSimons	The Kennedy Doctrine	New book.
3/25/72	3/10/72	McGraw-Hill	William Chapin	Wasted	New book.
3/31/72	3/17/72	World/T.Crowell	Marshall Goldberg	The Karamanov Equations	New book.
3/31/72	(3/15/72 ((11/30/71	Putnam) ( ) Viking)	(Robert Vaughn) ( ) (Eric Bentley)	Only Victims) Thirty Years of Treason)	Two new books about HUAC. Alger Hiss appeared at Berrigan trial at time of review.
4/7/72	12/10/71	Bartholomew	Patricia Tierney	Ladies of the Avenue	New book.
4/7/72	2/24/72	Gambit	Barone, Ujifusa, Matthews	The Almanac of American Politics	New book.
4/15/72	(3/3/72 ((3/27/72	Arlington) ( ) W.W. Norton)	(John Coyne) ( ) (Theo Lippman)	The Impudent Snobs) Spiro Agnew's America)	New book. New book.
4/21/72	2/29/72	Crown	Bridwell & Infantio	Batman: From the Thirties to the Seventies	New book.

Date of Taping	Pub. Date	Publisher	Author	Title	Occasion for Review
		Oxford U. Press	Erik Barnouw	The History of Broadcasting in the U.S.:	Reference book.
	(11/66			A Tower in Babel, Vol. I	
4/21/72	(3/69			The Golden Web, Vol. II	
	(11/2/70			The Image Empire, Vol. III	
4/28/72	General critique of Gore Vidal				Vidal play opening on Broadway same night.
4/25/72	2/28/72	Random	John O'Hara	The Ewings	New book. 2nd anniversary of O'Hara's death.
5/5/72	4/12/72	McGraw-Hill	Alex Karmel	Guillotine in the Wings	New book.
5/6/72	4/17/72	Little, Brown	Norman Mailer	Existential Errands	New book.
5/12/72	1/3/72	Public Affairs	L.W. Beilenson	Power Through Subversion	New book.
5/13/72	3/27/72	Bobbs-Merrill	Robert Shogan	A Question of Judgment: The Fortas Case and the Struggle for the Supreme Court	New book.
5/19/72	(4/24/72	William Morrow)	(Burton Hersh)	The Education of Edward Kennedy	New book.
5/19/72	(4/10/72	Quadrangle)	(W. Honan)	Ted Kennedy: A Portrait of Survival	New book.
5/19/72	4/21/72	Basic Books	Bruce Mazlish	In Search of Nixon	New book.
5/25/72	6/1/72	Sat. Review	Bella Abzug	Bella! Ms. Abzug Goes to Washington	New book.
5/25/72	4/20/72	Walker & Co.	E.H. Cookridge	Spy Trade	New book.

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Date of Taping	Pub. Date	Publisher	Author	Title	Occasion for Revie
6/3/72	4/10/72	Walker & Co.	George Carpozi, Jr.	Ordeal by Trial	New book.
6/9/72	4/24/72	McGraw-Hill	A. Schlesinger, Jr.	The Coming to Power	New book.
6/9/72	6/72	Putnam	John Kobler	Capone	New paperback edition.
6/16/72	6/12/72	St. Martin's	Antony Trew	The Moonraker Mutiny	New book.
6/16/72	4/19/72	Houghton Mifflin	D.F. Wallace	The Mountebank	New book.
6/23/72	3/26/71	Walker & Co.	Jan Adkins	The Art and Industry of Sand Castles	Vacation review.
6/24/72	3/20/72	McGraw-Hill	Vartanig G. Vartan	The Dinosaur Fund	New book.
6/30/72	4/17/72	Scribner's	Preface: P. Young	Ernest Hemingway's Nick Addams Stories	New collection.
6/30/72	3/21/72	Oxford	Henderson	D.W. Griffith: His Life and Work	New book. Griffith movie on TV that week.
7/7/72	6/15/72	Atheneum	Tischman	George S. Kaufman: An Intimate Portrait	New book.
7/29/72	(5/1/72	St. Martin's)	(David Kossoff)	The Book of Witnesses)	New book.
	(6/72	Crest)	(Dr. C.F. Potter)	The Lost Years of Jesus Revealed)	New re-issue.
8/3/72	8/27/70	Macmillan	Bach	Jonathan Livingston Seagull	Just became best seller.
8/14/72	5/24/72	Harper & Row	Merle Miller	What Happened	New book.
8/19/72	7/17/72	Farrar, Straus	James Mills	A Report to the Commissioner	New book.

Date of Taping	Pub. Date	Publisher	Author	Title	Occasion for Review
8/28/72	6/28/72	Harper & Row	Max Gallo	The Night of Long Knives	New book.
9/16/72	6/26/72	W.W. Norton	Walter Lord	The Dawn's Early Light	New book.
9/23/72	9/29/72	Scribner's	W.A. Swanberg	Luce and His Empire	New book.
10/7/72	3/6/72	Macmillan	Eda LeShan	What Makes Me Feel This Way	Author appearing on Channel 13.
10/14/72	9/6/72	William Morrow	Howard Fast	The Hessian	New book.
10/21/72	6/5/72	David McKay	Michael Dorman	Pay-Off: Organized Crime in American Politics	New book.
10/28/72	(9/26/72 Little, Brown)	(Nathaniel Benchley)	The Hunter's Moon	New books.
	(7/27/72 Putnam)	(Anthony Masters)	The Natural History of the Vampire	Halloween Review.
11/4/72	10/19/72	Macmillan	Herbert S. Parmet	Eisenhower and the American Crusades	New book.
12/2/72	10/3/71	Stein & Day	Warren Moscow	The Last of the Big Time Bosses	New book.
12/16/72	6/9/72	Doubleday	Mary Anne Guitar	Property Power	Six months old.

EXHIBIT R TO PAPERS IN OPPOSITION TO MOTIONS - TABLE OF JEFFERS' BOOK REVIEWS FOR WINS

EXHIBIT R

EXHIBIT R TO PAPERS IN OPPOSITION TO MOTIONS - TRANSCRIPTS OF BOOK REVIEWS OF JEFFERS

TRANSCRIPTS OF BOOK REVIEWS OF H. PAUL JEFFERS

NOTE: Dates are those of broadcast, except where asterisk (*) appears, denoting that the date is an approximation of date of broadcast. In these cases, the precise dates were indistinct in the available data.

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10/9/71

Well, now that Mayor Lindsay has switched from Republican to Democrat, his long-expected bid for the White House is attracting renewed interest. WINS's Paul Jeffers thinks that those interested in knowing what a Lindsay campaign for the White House would be based on, they should turn to the Mayor's book, The City, which was published two years ago. It is for those interested, says Jeffers, "must" reading.

It was Jimmy Walker who once asked, "Who would want to be President of the United States, when you can be Mayor of New York?" Answer: John Lindsay. Why does he want to be president? Well, because the cities are headed for ruin, and only the national government can bail them out. So says the Mayor. He's been saying it in trips around the country, on national TV, and before meetings of Democratic groups which could hold the key to the Democratic presidential nomination. "Time has run out," says the Mayor, "our cities will be saved now, or they will not be saved at all." He says the cities can be saved only if the federal government reorders its priorities. None of this is new for the Mayor. He said it before. And he wrote all about it in a book titled The City, published two years ago. It spells out what Lindsay will pick as his campaign issues: poverty, welfare, crime, drugs, the decay of the inner city, all due to a federal government that puts other things first, according to the Mayor. With issues like that, a man has to run as a Democrat, according to the Mayor. So now the Mayor has chosen his party and his issues, and the race is on. It's all uphill. He's new to his party, he's a long-shot prospect. If there is a deep concern by the majority of Americans about the cities, it has not been reflected either in state legislatures or the Congress. And history is against him. Only twice has America chosen former mayors president, none of them from New York City. As a blueprint for Mayor Lindsay's presidential campaign, The City is must reading. This is Paul Jeffers.

10/16/71

The late Senator Robert F. Kennedy and the FBI had always, as was publicly noted, been at tense odds with each other. WINS's Paul Jeffers, in a book review, discusses the Kennedy Justice.

One of the quotations cited most often by the admirers of the late Robert Kennedy was this one:

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[Tape of Robert Kennedy: "Some people see things the way they are and say, "Why?" I dream things that never were and say, 'Why not?'."]

Robert Kennedy made that statement in 1964, when he was running for the United States Senate from New York. For the three previous years, he had been Attorney General of the United States, under two presidents, his brother and Lyndon Johnson. Now, ten years after Robert Kennedy was named to head the Justice Department, there's an in-depth study of Robert Kennedy's years as Attorney General. The book is Kennedy Justice, by Victor Navasky. It shows that the idealistic Robert Kennedy was a practical man who would not turn his back on the expedient. President John Kennedy once said,"We must deal with the world as it is." Attorney General Robert Kennedy's world was dominated by one reality: J. Edgar Hoover, Director of the F.B.I. Navasky's book details their tense but working relationship. It gives page after page of how these two strong men dealt with each other, practically. Author Navasky writes: "If the F.B.I. would agree to join Kennedy's crusade against organized crime and his maneuvers for equal rights, then he, Kennedy, would enlarge the Bureau's formal jurisdiction, increase its budget, and leave it alone." Navasky says that Kennedy thus underwrote what he calls "wholesale invasions of privacy," including the bugging of the late Dr. Martin Luther King. There are things in Kennedy Justice that Kennedy people are not going to like, and not the least is the conclusion that Kennedy justice failed to go beyond the conventional. Why it failed is interesting reading. Kennedy Justice, by Victor Navasky, published by Atheneum. This is Paul Jeffers.

10/24/71

Now, with a special book review report on the saga and pictorial history of the Western film, WINS's Paul Jeffers.

[Tape of song from "High Noon," as Jeffers does voice-over, then goes on alone as music fades out.]

Gary Cooper stands torn between love and duty; Tex Ritter sings plaintively in the background. The movie is High Noon, made in 1952, directed by Fred Zinneman, a modern classic of the Western film. There is no record of just how many Westerns have been made, probably thousands. But the record of those we know about is found in a terrific paperback book, A Pictorial History of the Western Film, by William K. Everson. The pictures are plentiful, and the text by Everson is superb. The Western film is over seventy years old, Everson points out, and then goes on to document the history of them, titles, casts, directors. I was most interested in the chapter on the '40s, when Westerns were at their peak. I was a kid then, and Saturday afternoon horse operas at the Rialto were a weekly ritual: Roy Rogers, Gene Autry, Gabby Hayes, not to mention Don Red Barry, Bob Steele, and Hopalong Cassidy. I never missed a Bill Elliot picture, nor a Johnny Mack Brown with Raymond Hatton, and, of course, Tex Ritter. [Music fades in again.] They're all in Everson's book. For a journey back to your own days in boots and saddles, I recommend A Pictorial History of the Western Film,

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by William K. Everson, published by Citadel, $3.95 in paperback. Ask for it at the general store. This is Paul Jeffers.

10/31/71

Ever since the first atomic bomb was dropped before the end of World War II, the U.S. arsenal has been steadily stockpiled with nuclear weapons. WINS's Paul Jeffers offers a review now on the latest book dealing with nuclear weapons, The Great American Bomb Machine.

In August of 1945 atomic bombs were dropped on Japan by order of President Truman.

[Tape of Truman: "The bombs were dropped after Japan had been warned that we had discovered the greatest explosive in the history of the world, and then we asked them to surrender. They did not do it.]

Since Truman made the fateful decision to use atomic weapons against Japan, the United States has been in the business of building, testing, and stockpiling atomic weapons. The latest controversy over nuclear testing centers on the proposed test at Sitka, Alaska. The purpose of our atomic arsenal, says the government, is to prevent war. Winston Churchill once claimed that the atom bomb in American hands prevented the Communization of Europe. We cannot prove Churchill's claim; We can't prove that our nuclear arsenal had prevented a Third World War; we know only that there has not been one. We can only ask, "Would we be free if we had not had the bomb?" Now an author named Roger Rappaport writes in a book being published next week: "We should do away with our nuclear arsenal." Rappaport says that our atomic program poses a greater threat to us than all our enemies, real or imaginary. He says that atomic bombs are a health hazard, and they are expensive. Solution: "Unilateral disarmament." We get rid of our atomic weapons. Presumably, the Russians and the Chinese will voluntarily get rid of theirs. If you believe that, you read different newspapers than I do. The solution to whatever health hazards result from nuclear arsenals is not foolhardy, one-sided disarmament. Health and environmental problems related to nuclear energy are real, but Mr. Rappaport's solution to those problems is poppycock. This is Paul Jeffers.

11/14/71

This review, as Paul Jeffers takes a look at former President Lyndon Johnson's Vantage Point.

It was July 28, 1965, and President Lyndon B. Johnson was on the air. Subject: Vietnam.

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[Tape of Johnson: "We just cannot, now, dishonor our word or abandon our committment, or leave those who believed us and trusted us to the terror and repression, and murder that would follow. This, then, my fellow Americans, is why we are in Vietnam."]

More than six years have passed since the upward spiral of U.S. troop commitments began. The spiral is now reversed. In the common phrase, the war is winding down. Well, how did it get wound up? You can get answers that range from stupid bungling to selfless sacrifice. Now, in his memoirs, The Vantage Point: Perspectives on the Presidency, 1963-69, Lyndon Baines Johnson writes about Vietnam. There are no apologies. He tells what he did and why, and he lets us know that he did what he did because he thought it was right. He still does. This is not Daniel Ellsberg's story of Vietnam, nor William Fulbright's, nor Teddy Kennedy's. It's Lyndon Johnson's, and it should be. "I have not written these chapters to say how it was," Mr. Johnson writes, "This is how I saw it from my vantage point." In doing that, the former President has angered some of his critics, but they have been angry before. We have their books already, and will get more. It's only fair to have before us Lyndon Johnson's book.

Coincidentally with the publication of Mr. Johnson's memoirs, Dell paperbacks has reprinted Lady Bird Johnson's A White House Diary. This is Lady Bird's vantage point. If you missed it in hardcover, read it now, as you read her husband's book. Together, they'll give you the presidency, the 60s, and America, as that extraordinary couple saw them. This is Paul Jeffers.

11/21/71*

Now WINS book reviewer Paul Jeffers and his thoughts on the new book, Tracy and Hepburn.

If you're like me, you'll take the day off or rearrange your social life when the TV listings announce they're showing "Pat and Mike," or "Adam's Rib," or "Desk Set," with Katherine Hepburn and Spencer Tracy. No combination in our history, no president-vice president combo, no singing group, no cowboy and sidekick, no late-night TV host and his announcer, have ever reached the excellence of Tracy and Hepburn. With the possible exception of our form of government, there's no finer contribution by America to the world than Hepburn and Tracy. Carson Kanin, who ranks pretty high among this country's contributions himself, has written about Tracy and Hepburn, in a book of that title, published by Viking. Kanin insists that the billing was always as he has it in his title, Tracy and Hepburn. I always listed them the other way around. But as Kanin points out, "Tracy dismissed the idea of Miss Hepburn getting top billing with the comment, 'This is a movie, not a lifeboat. No way for a lady to go first in the movies.'" However, in Kanin's dedication of this book, it's "to Kate and Spence," in that order. But that's not true, either,

* In this and other instances of asterisk, date is an approximation of precise date of broadcast.

because this wonderful book is for all of us, who will always rearrange a part of our lives to make room for them. This is Paul Jeffers.

12/4/71*

It's always a good idea to read and listen to both sides of any controversy, in judging any of the controversial nature anyone, that is the essence of this report. Now, WINS newsman Paul Jeffers as he speaks to two books rating the results of the Nixon administration

Back in 1965, Richard Nixon's political fortunes were so low that someone suggested that he might settle for the job of baseball commissioner.

[Tape of Nixon:"I think probably the baseball commissionership will go to somebody else. I would not have the opportunity to give it the full time that it requires. It's the best offer I've had today."]

When he said that in 1965, Richard Nixon was looking toward the White House. Now he has it. How's he been doing? Two books offer an answer. One, by the reporting team of Evans and Novak, is called Nixon in the White House: The Frustration of Power. Evans and Novak put a qualified minus sign on the Nixon presidency. The second book is by novelist-reporter Allen Drury and photographer Fred Maroon. Their book is titled Courage and Hesitation, and they were allowed a peek inside the Nixon White House. They give the President a qualified plus sign. Both books say that Mr. Nixon has been a hesitant president. Both books were written pre-Peking visit and pre-Phases I and II. In that, both books probably won't hold up as guidelines to where the President goes from here. They are, however, route maps of where he's been. Both books indicate that no one knows Richard Nixon, perhaps not even Richard Nixon. I suspect that the only valid portrait of the Nixon presidency will be written by a future historian. For today, Evans, Novak, Drury, and Maroon have given us their insights. In fairness, if you read one, you should read the other. This is H. Paul Jeffers.

12/12/71

With organized crime constantly in the news, WHN's [sic] H. Paul Jeffers takes a look at two new books on the subject.

Back in 1963, a Senate committee headed by Senator John McClellan was hearing testimony from a gangster named Joseph Valachi.

[Tape of Valachi giving testimony, 30 seconds]

Joe Valachi drew back the curtain on an organization he called La Cosa Nostra. A more popular name was the Mafia. That organization, whether real or imaginary, is always grist for a writer's mill, and

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if organized crime is your thing, there are two books out now that tell you everything you wanted to know about the Mafia but were afraid to ask.

Gay Talese has a best seller in his book, titled Honor Thy Father, all about Joe and Bill Bonano and assorted others. Frankly, I had a hard time finishing the book. I kept thinking I was tuned in to radio's sentimental "One Man's Family."

A much tougher and less sentimental book is by Nicholas Gage, The Mafia is not an Equal Opportinity Employer. The title is flippant; the book is not. It makes a good companion reader if you're set in getting into the Talese book about the Bonanos. If you're making up a Christmas gift list and want a three-book parlay, you could give someone Honor Thy Father, The Mafia is not an Equal Opportunity Employer, and last year's biggie about the underworld, Mario Puzo's The Godfather. Give all three for a "family" Christmas." This is H. Paul Jeffers.

12/19/71*

A writer's personal interview with God? That's the topic of a new book, discussed now by WH--WINS's H. Paul Jeffers.

About 20 years ago, there was a movie with James Whitmore called "The Next Voice You Here." It was about God speaking to the earth through the radio. The voice came over the loudspeakers for six straigh days. By the seventh, peace had come to the world. The human race waited to hear God one more time. It didn't; it was the seventh day, and He rested. The picture comes to mind for two reasons. First, the season, Christmas, when the Christian world observes the appearance of the Son of God on earth. Second, a novel by Avery Corman titled Oh, God. It's about a Jewish freelance writer who's done a piece on the Rolling Stones for the New York Times. One day he gets a letter. It says, "God grants you an interview. And God does indeed grant the interview. He says He liked the piece on the Stones. He's concerned about all the talk about Him being dead. Not dead, God insists, just retired. God speaks like a Jewish businessman, because he figures that's the way to relate to a nice Jewish boy. From the writer's first meeting with God, through an intercom on the thirty-seventh floor of a twenty-six-floor building on Madison Avenue, Oh, God, by the talented Mr. Corman, is a funny book. You'll laugh out loud at this small, easy-reading novel published by Simon & Schuster. Does God's appearance on earth, in this book, change the world, the way it did in the movie twenty years ago? Do men beat their swords into ploughshares? Do the meek inherit the earth? Would I tell you? Not a prayer. Oh, God, by Avery Corman. This is H. Paul Jeffers.

12/26/71

WINS's Paul Jeffers offers a review on a book being released in 1972, Fields for President, written by W.C. Fields.

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With 1972 nearly upon us, we can expect the book market to be glutted with books of, by, and about men running for president. Few, if any, of these books will deserve more than a passing glance. In fact, the only presidential candidate's book worth reading is an old one, first published in 1938, by W.C. Fields. Dodd, Mead has brought it out again with an introduction by Michael M. Taylor. In it, you will find the Fields presidential platform for 1940, and among the planks, such gems as, " Of all the presidential hobbies, I think General Grant's came nearer my ideas and ideals." Fields's love for the juice was, of course, legendary.

[Tape of Fields: "...as we stumbled across a field of bourbon. We went right on stumbling for several days thereafter."]

Besides his thoughts on drink, Fields offers other views on the presidency. The president should know the secrets of success of business, for, after all, what is the presidency but a glorified business, or at least a fine racket. On campaign promises: "They are nothing but overgrown New Year's resolutions. They are thrown together hastily at the last minute, with never a thought as to how they may be broken gracefully. Why did Fields announce for president in 1940? Because of his motto, "Never give a sucker an even break." "My ideal," he wrote, "is to rise to one of the great positions in the nation, wher I may exercise it to the fullest." Now if all those 1972 presidential books would be as candid as Fields for President, published by Dodd, Mead. This is H. Paul Jeffers.

EXHIBIT R TO PAPERS IN OPPOSITION TO MOTIONS -
TRANSCRIPTS OF BOOK REVIEWS OF JEFFERS

1/16/72

Now, a WINS book review, as H. Paul Jeffers sizes up a new book on how to lose money in the stock market, if you need a book for that.

One of last week's newsmakers was Abraham Teff, a college kid who used a phone and no money to obtain $200,000 in stocks. If you you think Abraham Teff's Wall Street Wizardry was enlightening about the state of the stock market, I have a book for you. It's The Funny Money Game, by Andrew Tobias. Andy was just another Harvard student back in 1968, when he bought stock in National Student Marketing Corporation at $16 a share. This outfit was going to get a hammerlock on the youth market. The $16 stock went up to $23, then to $37 and much, much higher. It was, so to speak, hot. But it was all built on air, gossamer, dreams. Like Dorothy, it was a world over the rainbow. It went bust. How and why is related by Andy Tobias. If your jaw dropped at the escapades last week of that kid in Philly, this book will really have you gaping. Learn all about glossy prospectuses that are high on salesmanship and short on fact. Get a good look inside one side of the Wall St. money machine, and learn why, if you're a small investor, you might be better off with a savings account. Tobias's stock finally plummeted to $3.50 and apparently deserved to. But bear in mind that people lost their shirts in the process. If you're considering dabbling in Wall Street, I suggest you get your hands on The Funny Money Game, by Andrew Tobias. It sells for $6.95, but it could save you a lot of money. This is H. Paul Jeffers.

1/23/72

Now, WINS's H. Paul Jeffers reviews a new book looking back at the Truman Doctrine and the origins of McCarthyism in the 50s.

In his State of the Union address on Thursday, President Nixon referred to former President Harry Truman's 1947 call for a foreign policy built on the containment of Communism. Now Richard Nixon says the United States is developing a new policy that breaks sharply with the old concept of America as the world's policeman. The Truman years are history, and historians are giving us their judgments. They all refer to that historic moment when Truman outlined what was to be American foreign policy for 25 years.

> [Tape of Truman:]"The free peoples of the world look to us for support in maintaining their freedom. If we falter in our leadership, we may endanger the peace of the world, and we shall surely endanger the welfare of this nation."

That Truman Doctrine is the subject of a book by Richard M. Freeland. It's titled The Truman Doctrine and the Origins of McCarthyism The book was originally a doctoral dissertation at the University of Pennsylvania. Dr. Freeland's premise is that Truman's doctrine of anti-Communism led inevitably to the McCarthyism of the early 1950s. Freeland blames Harry Truman for creating an anti-Communist hysteria. I think that notion's ridiculous. It seems to me it was Stalin, the threat to Greece and Turkey, the Berlin blockade, and Communist

aggression in Korea that provoked our anti-Communist mood. The Truman Doctrine rose to meet the challenge. To blame Harry Truman for the McCarthy period that sprang from a Communist threat does a disservice to a president who saw that threat and had the vision and the courage to meet it. It is not Freeland's book that catches the essence of the immediate post-War years, but Harry Truman who summed it all up in one telling indictment of the real culprit of the Cold War.

[Tape of Truman:] "The refusal of the Soviet Union to work with its wartime allies for world recovery and world peace is the most bitter disappointment of our time."

This is H. Paul Jeffers.

1/30/72

Now, a WINS book review, as editor H. Paul Jeffers offers his reaction to a new novel by Herman Wouk.

With the Viet Nam War apparently in its terminal stages, at least as far as the United States is concerned, thoughts turn increasingly toward finding out how we got into the war in the first place. How and why countries went to war is always part of the post-war politics. Usually, wars start because governments and people let them start by getting beyond the point where they could have prevented them. That is part of the substance of Herman Wouk's mammouth novel, The Winds of War. I'm reading it now, and perhaps it's a no-no for a reviewer to review a book while he's still reading it, but this is a darn good book, too good to keep from talking about until I'm finished reading it. Through the personal stories of people living their own lives between 1939 and the end of 1941, Wouk weaves into this book the politics, the world leaders, the blunders and the blindnesses that threw the world into war on a global scale. For anyone to whom World War II is history, not a memory, Wouk brings it all to life, with the original cast, if you will. There's a splendid account of the Blitzkrieg by the Nazis into Poland. It's a picture of ineptness, bravado, horror, and even comedy. And throughout the book, as far as I've read, there is that recurring theme that if someone had just gone up to Hitler at the right time and said, "Stop," he would have. And at some point always, that is true of all war. As I said, I'm still reading The Winds of War, by Herman Wouk. If you aren't reading it, you should be. This is H. Paul Jeffers.

EXHIBIT R TO PAPERS IN OPPOSITION TO MOTIONS -
TRANSCRIPTS OF BOOK REVIEWS OF JEFFERS

2/6/72

Pullitzer Prize-winning poetess Marianne Moore has died here in New York at the age of 84. WINS's literary critic H. Paul Jeffers has a special retrospective report on Miss Moore's career.

The American people of late have not been all that in love with poetry or poets, so it takes something else besides poetry to make poets national celebrities. With Marianne Moore, it was her love for baseball. Miss Moore died last night at the age of 84. It was a life filled with praise and awards for her work. She won a Pullitzer in 1951, and a National Book Award for that same year. She also won France's Legion Cross honor, Order of Arts and Letters. In '68, she won the National Medal for Literature. Those awards came late for her. Her poetry has been in print since 1909. But it was her love for baseball that got her into the headlines, as much as her poetry. Marianne Moore loved the game so much, she kept three TV sets going in season. As poets are supposed to be, she was spartan in her personal life. Her day began at sun-up, often sooner, and breakfast was likely to be orange juice, farina, and a banana. Then off to work The work was a charming collection of witty and intellectual poetry which she lightly dismissed as "things." One of the most delightful of the things was "O, to be a Dragon," published in 1959. Although Marianne Moore died at her home in Manhattan, she was a long-time resident of Brooklyn, and that somehow added to her charm. We don't think much about Brooklyn as a home of poets, but then, we hardly ever think of poets, until they're gone. This is H. Paul Jeffers.

EXHIBIT R TO PAPERS IN OPPOSITION TO MOTIONS -
TRANSCRIPTS OF BOOK REVIEWS OF JEFFERS

2/13/72

With one eye on Howard Hughes and another on author Clifford Irving, you wouldn't think the WINS book editor could use both eyes to read an autobiography by a man once labelled as a "spewer of the awfullest pornography." But critic Paul Jeffers finds times have changed.

I'm gonna talk about an autobiography. No, not the one by you-know-whom about you-know-whom that's been in the headlines for the past few weeks. I haven't read that one, not being either a lawyer or a prosecutor, and by this late date, I don't think I even want to read it. The autobiography I want to talk about is My Life and Times, by Henry Miller. Once, anything by Henry Miller would come to you inna plain brown wrapper. My first reading of one of his books was by way of a friend overseas who sent Tropic of Cancer to me through the army postal system, bypassing Customs, which would have seized the book. As it was, my mother seized it. This obviously was before the so-called sexual revolution. Books you can buy today on the rack at your local drug store make the Tropics books by Henry Miller seem tame indeed. Of course, there's a big difference between Miller and the writers of racy books today. He was, and is, a great writer, a pioneer. The others are imitators. So when Henry Miller writes about himself, it's worth reading. The book is lavish in its production, with color photos, reproduction of some pages from his original manuscripts, and the like. The text is brilliant, of course, touching on Miller's life-style now, his writing, Big Sur, California, and women. The book is expensive. $17.95, but it's genuine autobiography by a man who is at least as interesting as that fellow in seclusion in the Bahamas. This is H. Paul Jeffers.

2/20/72

WINS's Paul Jeffers received something in the mail recently, and as a book reviewer, he felt a glowing urge to bring to your attention his thoughts about the latest literature offering, at least, his review of what he received in that mail offering.

A book reviewer gets lots of reading material in the mail: catalogues from publishers, notes from publicity agents trying to boost sales of a client's work, various kinds of reading matter. This means the book reviewers look forward to the arrival of the postman. Well, the other day, my mailman brought me a copy of a publication being read today by more people than anything else in print. It's a

small volume and rather on the technical side. Frankly, if it weren't for the fact that everyone's reading it right now, I wouldn't have bothered about it. I refer to the 1971 Instructions to Form 1040, published by the Department of the Treasury on behalf of the Internal Revenue Service. This cleverly contrived piece of writing has a foreward by the Commissioner of Internal Revenue, who starts his introductory essay with the catchy line, "We know that filling out a tax return is not fun." Then come the instructions, from a sample form on page 2 to the index on page 28. This is not a book to take to bed with you to get in the mood to doze off. This is a daylight book, to be read preferably seated at a desk with a large stack of paper and some sharpened pencils for taking notes. It is also not a book for speed readers. Your kids will want to know what it is you're reading so intently, wondering if perhaps it's the latest racy novel by Harold Robbins. Assure the children that when they are old enough, they can read it, but not before. There are some things that children should be shielded from. The 1971 Instructions for Form 1040 can be hard going, but as I said, it is must reading. It's available only in paperback. This is H. Paul Jeffers.

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TRANSCRIPTS OF BOOK REVIEWS OF JEFFERS

3/16/72

And now, WINS's H. Paul Jeffers reviews the autobiography of a movie star.

It takes an actor of some prominence to assume that someone would be interested in reading about his life in the form of an autobiography. It also takes an actor who has more depth to his life than the space between the footlights and the backdrop. One shudders at the thought of reading a book that is nothing but entrances, exits, and soliloquies. So one approaches an actor's autobiography with some trepidation. Well, as far as David Niven's story goes, forget the trepidation. It's a book as classy and erudite and worldly as any of the parts played by Niven in the movies. He calls his book The Moon's a Balloon, for reasons he explains in an introduction. The words are from an e.e. cummings poem. Since you will be reading this book, I'll leave the explanation of the title out of this review. The Moon's a Balloon is very pleasant: touching, funny, adventurous and a study in name-dropping. Niven apparently knew, or knows, everybody. What makes Niven's book better than most books about actors is also a writer. But somehow you expect that of David Niven! eh, what? This is H. Paul Jeffers.

3/19/72

Now a look at the new book, The Hindenburg. And here is H. Paul Jeffers.

When I was a kid, and someone told me the tower atop the Empire State Building was intended as a mooring mast for dirigibles, I didn't believe it. Of course it was true, although no dirigible ever moored there. Lakehurst, New Jersey was chosen as the aerodrome for those huge, cigar-shaped air bags that were envisioned as ocean liners of the skies. On May 6, 1937, Chicago radio announcer Herbert Morrison was at Lakehurst, describing the arrival of the grandest of all the dirigibles, the Hindenburg.

[Tape of Morrison describing the disaster, fades out as Jeffers voices over, then continues alone:]

That very famous broadcast by Herb Morrison and some equally famous films of the Hindenburg disaster are familiar to many people, who, like me, believed that the Nazi-built dirigible blew up because of an accident, probably as the result of static electricity. But it looks now like it was really sabotage, the act of a young crew member with a grudge against the Nazis. He apparently used a photographic timer to set off the bomb, but something went wrong, and it blew up in the air, instead of on the ground. The bomber himself died of burns. So did 35 others of the 97 people aboard. All of this is in a compelling book titled The Hindenburg, published by Dodd, Mead, written by Michael M. Mooney. The tragedy of the Hindenburg is timely today, in light of the lunatic bomb threats against airlines almost everywhere. The book is going to be made into a movie, by the way, one of those pictures where you'll want to yell at the people on the screen to warn them what's going to happen to them if they get aboard that dirigible. The Hindenburg, by Michael Mooney is a book with a grim relevance to today. This is H. Paul Jeffers

3/25/72

Now, a special report by WINS editor Paul Jeffers, as he reviews the book, The Kennedy Doctrine.

The John F. Kennedy most people remember was the man who said, "Ask not what your country can do for you, but what you can do for your country." But in that same inaugural address, Kennedy also said:

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[Tape of John F. Kennedy:] "Let every nation know, whether it wishes us well or ill, that we shall pay any price, bear any burden, meet any hardship, support any friend, oppose any foe, to assure the survival and the success of liberty."

The question is, "Was John F. Kennedy just another 'cold warrior?'" Louise FitzSimons, in her book, The Kennedy Doctrine, thinks so. She states that Kennedy never questioned the basic ideology of the cold war, and that the Bay of Pigs, the Cuban missile crisis, and Viet Nam were the result. She says Kennedy's achievements were meager as president and that he failed to move the nation, to "get it going again," as Kennedy so often said he wanted to do. The Kennedy Doctrine is a sharp departure from the doctrine of Kennedy followers in the past 9 years that Kennedy presided over a new Camelot, and that what we all need now is a return to those wonderful days, presumably behind the leadership of another Kennedy. Kennedy books until this time have largely put forth that notion. The Kennedy Doctrine dissents from it. One wonders just whom Louise FitzSimons prefers over the cold warriors before and since Kennedy, but not until the last page does the reader get a hint: Gene McCarthy, apparently. The Kennedy Doctrine, published by Random House, gives a view of President Kennedy that until now came mostly from Republicans who always seemed more than a little embarrassed about saying something critical about a dead man. This is H. Paul Jeffers.

3/26/72

To write a book about drugs is nothing unique these days, but there is a new work out that is unique in more than just a few ways. Here is H. Paul Jeffers:

There are plenty of books around about drugs, some good, some better. I want to recommend a new one, especially to parents who have kids using drugs or who are afraid that their kids may use them. The book is titled, Wasted. It's by William Chapin, a West Coast journalist whose son, Mark, got into marijuana at age 14 back in 1964.

[Tape of William Chapin:] "Mark was by no means the only kid in the school smoking it. There were plenty of 'em."

Wasted, published by McGraw Hill, is about Mark Chapin, but this is also a book about his parents and the special kind of hell they went through with kids on drugs.

[Tape of Chapin:] "You do conduct searches. You do also, at least in our case, tend to get, it's hard to describe it, but when you find something, why, somehow you're redeemed in a way. You--'O.K., I've made this search, which is a lousy thing to do, to search your own son's room, suddenly you find some marijuana, or whatever, or pills, which was the case sometimes, uh, ah ha! suddenly you're justified in making the search."

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And there is the sight of the kid, wasted.

[Chapin:] "He became more and more emaciated, more and more remote, more and more careless about his own physical being. He didn't give a damn about what he looked like, which I think is part of being wasted."

William Chapin writes movingly about his son's experiences with drugs and the upheaval Mark's drug addiction caused in the Chapin family. Probably if a kid is going to get into drugs, there is nothing parents can do about it, except to realize that there are limits to blame, self-recrimination, and feeling guilty.

[Chapin:] "In the last analysis, that guilt doesn't really solve anything, it's kind of a wasteful result."

The author is William Chapin, the book, Wasted: The Story of My Son's Drug Addiction, published by McGraw-Hill. You should read it. This is H. Paul Jeffers.

4/2/72

The mathematics in Karamanov's equations is just one small part of a sizzling good tale reviewed now by WINS book editor Paul Jeffers.

Over the past 25 years, the world has lived with the cold war. Crisis followed upon crisis, and the lines were pretty clearly drawn between the Communists and us. A lot of people today are saying the cold war is over, and they point to the travels of that arch cold-warrior Richard Nixon as proof. Time will tell. In the meantime, the cold war gave us a large body of literature ranging from James Bond to the scholarly. Because the cold war was so chock full of espionage and counter-espionage, the period will always be a treasure house of ideas for thrillers. I recommend the latest of this line of books, a novel by Marshall Goldberg titled The Karamanov Equations. Karamanov is a Soviet scientist who has invented a way to destroy incoming missles. It's a super anti-missle electronic ray. Only Karamanov knows the equations that make it work, but he is stricken with a condition that threatens his life. Complication: the only guy who can save Karamanov is an American surgeon. The CIA would like Karamanov to die on the operating table. The surgeon has an oath to uphold as a healer. Therein lies the tale, and it's one told well, with considerable expertise, because the author is himself a surgeon. I'm not going to tell you the outcome, but I warn you, while trying to guess the ending as you read The Karamanov Equations, keep your eye on all the characters. If you do your reading late, I suggest you save The Karamanov Equations for a night when you can really stay up late, because you'll read this non-stop book until the end. This is H. Paul Jeffers.

4/1/72

"Who cries uncle" is not the name of the book, but Paul Jeffers has this review of two books that deal with that question.

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Showing up at the Berrigan trial at Harrisburg last week was a man out of the past. His last big moment in the spotlight came in 1948.

[Tape:] "My name is Alger Hiss. I am here at my own request to deny unqualifiedly various statements about me which were made before this committee by one Whittaker Chambers day before yesterday."

That was Alger Hiss, appearing before the House Un-American Activities Committee. Hiss was later convicted of perjury. At Harrisburg last week, he said the Berrigan trial reminded him of conditions 14 [sic] years ago. To Robert Vaughn, in his book Only Victims, the HUAC was like a lynch mob. Much the same viewpoint comes from Eric Bentley's Thirty Years of Treason. Bentley's is the better book, largely because he lets the record speak for itself. Vaughn's book is dripping with sarcasm, largely against witnesses called the "friendlies," because they cooperated with the Committee. Walt Disney is described by Vaughn as the creator of Mickey Mouse, which he was, but he was also a film giant. To Vaughn, Ronald Reagan is an actor, George Murphy a song-and-dance man. Vaughn is as unfair with that smart-aleck approach as would be anyone who simply described the writer of Only Victims as the Man from UNCLE. Eric Bentley's book is infinitely fairer in its approach to the HUAC story. It's almost completely hearing transcripts, with none of the showbiz pizzaz that Vaughn puts unfairly into Only Victims. You get the feeling that Vaughn would like to gather all the past members of the House Un-American Activities Committee and get them before a committee of some kind, until they say, "Uncle." This is H. Paul Jeffers.

4/8/72

Well, with another presidential once again upon us, what better time for another book on politics. H. Paul Jeffers takes a look at The Almanac of American Politics.

The American humorist Will Rogers said, "Ancient Rome declined because it had a Senate. Now what's going to happen to us with both a Senate and a House." The U.S. Congress has always taken its lumps. Criticism of the Congress is easy and often valid. Nonetheless, the U.S. Congress is the centerpiece of our democratic form of government. What do you know about the Congress and the men and women serving in it right now? Probably not very much. Well, there's a book out that can fill you in on the present Congress. The Almanac of American Politics was put together by three young men who got to know each other at Harvard a few years ago and came up with this idea. Their almanac lists all the members of the Congress, state by state, giving their biographies and their voting records. The book is written with a liberal slant, but it is, in the words of Conservative William F. Buckley, Jr., a valuable reference tool, especially in an election year. I don't know who said it, but the Almanac of American Politics certainly bears it out: "The members of the Congress all row together in the same boat, but in different directions." This is H. Paul Jeffers.

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4/9/72

Women's Lib now has a spokesman--er, woman--on Madison Avenue. WINS book editor H. Paul Jeffers reviews.

The title of the book I am reviewing today is Ladies of the Avenue. No, not those ladies. The gals in question are in the advertising business, and the "avenue" of course, is Madison. Patricia Tierney, author of Ladies of the Avenue, has turned out advertising copy for shampoo, flavored gelatin drinks, and a host of other products produced by such firms as Revlon, DuPont, Lever Brothers, and General Electric. Now, if you are like me, you are somebody who talks back to commercials. You say, "Oh, yeah?" and "You bet!" and "Do you expect me to believe that?". And you ask yourself what kind of dummies thought up that boloney they hand you in 30- and 60-second spots. Well, Patricia Tierney tells you about the dummies, and some of the good guys, the stupidity, the brilliance, and the frenzy of the people of the advertising world. Patricia Tierney's special slant on the advertising business is the role of women in it. She describes the ladies of the avenue as vulnerable Janes in a jungle of Tarzans. Ladies of the Avenue is a Women's Lib indictment of the prejudice and oppression of women on Madison Avenue. The ultimate Madison Avenue put-down of women is in the commercials which never show women in executive positions, always housewives, and dumb ones at that. Patricia Tierney got tired of being put down, so she evened the score by writing Ladies of the Avenue. I asked a friend of mine in advertising if he had read the book. "No," he said, "What would a woman know about advertising anyway? It's a man's business." This is H. Paul Jeffers.

4/16/72

Two new books surfaced last week about the man whose name is now unquestionably a household word: Spiro Agnew. WINS editor Paul Jeffers offers his reaction in this report.

After a period of relative silence, Vice President Spiro Agnew surfaced last week for what seems to be the opening of Mr. Agnew's 1972 political season. Also last week, two new books on the Vice President appeared. Spiro Agnew's America, by Theo Lippman, is a critical study of the Vice President and the politics of suburbia. John Coyne, Jr. has written The Impudent Snobs, a laudatory report subtitled Agnew vs. the Intellectual Establishment. Lippman's book is political biography, Coyne's is a framework for the complete speeches of the Vice President from August, 1968 to June, 1971, including one given in November, 1969 which is the essence of Agnew on the speaker's stand.

[Tape of Agnew:] "One magazine this week said that I'll go down as the great polarizer in American politics. Yet when that large group of young Americans marched up Pennsylvania Avenue and Constitution Avenue last week, they sought to polarize the American people against the President's policy in Viet Nam, and that was their right, and so it is my

right and my duty to stand up and speak out for the values in which I believe."

Because the Vice speaks about polarization, so do these two books about him. Lippman's biography makes the point that Agnew is the product of a polarized society, of a nation divided and dividing between the cities and the suburbs. Lippman says that Agnew is the first realli suburban politician to rise to high national office. He writes, "The times are not the result of Spiro Agnew; Spiro Agnew is the result of the times." Coyne's The Impudent Snobs is a glowing endorsement of the Vice President. You cannot have a fair picture of Mr. Agnew on either book alone, but Spiro Agnew's America and The Impudent Snobs together will give you a yardstick by which to measure Agnew as he goes off to battle in the campaign of '72. This is H. Paul Jeffers.

4/22/72

The History of Broadcasting in the U.S. and a book review now by H. Paul Jeffers of WINS.

For most of this century, the American people have been enthralled by three things: the automobile, the movie, and broadcasting.

[40 second tape of very brief excerpts from old radio shows: Call-letter I.D.s, Bob & Ray, Kate Smith, The Lone Ranger.]

The history of the American love affair with broadcasting has been written in three magnificent books by Professor Erik Barnouw of Columbia University. All of us have memories of the radio shows or TV programs that held us spellbound as kids and adults, but there's more about broadcasting in America that we have forgotten than we remember. So if you're a serious broadcasting buff, you'll find Professor Barnouw's three-volume History of Broadcasting in the U.S. a treasure of nostalgia and trivia, as well as a serious account of how we have become a nation oriented almost entirely to broadcasting as a source of news, information, and entertainment. In A Tower of [sic Babel, Barnouw writes about radio's earliest days, from its invention until 1933. The Golden Web covers 1933 to 1953, the so-called golden days of radio and early TV. The Image Empire picks up in 1953 and comes up through the 1960s. The books are expensive, but they are also valuable, not only as reading material for pleasure, but as a reference source. No doubt they'll be required textbooks for college courses in broadcasting. Because Professor Barnouw writes with feeling and with zest, his monumental 3-volume History of Broadcasting in the U.S. is a delight to read. This is H. Paul Jeffers.

4/23/72

Now a WINS book review from editor H. Paul Jeffers:

What is a Sunday without the comics?

[Tape of Mayor LaGuardia reading Dick Tracy on radio.]

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When Mayor LaGuardia read the funny papers on the radio during a New York newspaper strike, Fiorello was fully aware of the political advantage to be gotten from the gimmick. But he also felt sorry for thousands of kids deprived of one of the joys of childhood. Interest in the comics has been in a decline over the past 20 years, due largely to the fact that kids now watch cartoons on TV. But while the fascination of the kiddies seems to have slipped, the interest of older folks in the comics has been on the rise. Many of the old favorites have been collected into books. The latest is Batman:From the Thirties to the Seventies, published by Crown. Here is the Caped Crusader, from his origins in the 30s to the socially relevant crime fighter of the 70s. Here too are the villains: Joker, Two-Face, and all the others. In case you've forgotten, this collection of Batman stories will refresh your memory on such things as how Bruce Wayne came to hire Alfred, his loyal butler, where Bruce Wayne met Dick Grayson, who joined his crime-fighting escapades as Robin the Boy Wonder, and the origin of the Batcave. You'll also meet Batgirl and discover that she had a yen for Robin, and vice-versa. By the 1970s, Robin is grown up and off to college, leaving Batman to fight crime alone once more, which is where we all came in. If comic nostalgia is your thing, check out Batman: From the Thirties to the Seventies,published by Crown. This is H. Paul Jeffers.

4/29/72

The Ewings, by John O'Hara, reviewed by an admitted fan, WINS's H. Paul Jeffers.

When John O'Hara died two years ago this month, one of the truly fine craftsmen of fiction passed from the American book scene. In his life, O'Hara produced seventeen novels and eleven volumes of short stories. He was a prolific writer and one of my favorites. Once I discovered O'Hara, I quickly learned, as do all his readers, that he was a master story-teller, and probably the best writer of dialogue in America. That was curious, because O'Hara never succeeded as a playwright, although he tried and tried. We have now the last of John O'Hara's finished novels. I found The Ewings to be in the mainstream of O'Hara writing, although it does not match some of his other books for sweep or size. It's a book for sentimental reading, for realizing the talent lost to us in death. Of all his books, the most lasting one is his first, Appointment in Samarra. It's a book that you go back to every couple of years to read again. Probably the most popular of his books is Ten North Frederick. It won the National Book Award in 1956 and was made into a fairly successful movie. Practically everything John O'Hara wrote is available in paperback. The books compete very well with the latest fiction. Because we may not see the likes of John O'Hara again, if you are already an O'Hara fan, read The Ewings. If you haven't yet discovered O'Hara, start with Appointment in Samarra and read them all. This is H. Paul Jeffers.

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4/30/72

And now, WINS's H. Paul Jeffers discussing the work of Gore Vidal.

A new play by Gore Vidal opens on Broadway tonight. Any comments on the play itself, I leave to drama critic Martin Gottfried. But the presentation of any new writing by Gore Vidal brings to my mind the whole array of his work, especially his books. Vidal's writing has always been controversial, and has been getting more so in recent years. Most notable of his lighter work was Myra Breckenridge, which was an awful book and a worse movie. I personally believe Vidal's writing has not been very good largely because he has become more and more cynical over the past few years. His most popular theme of late has been what he calls the "American empire." This is the theme of the novel, Washington, D.C., and it is apparently the theme of the play opening tonight. Vidal thinks the United States is a modern Rome: decadent, evil, aggressive, imperialistic. I don't happen to believe that, and what's more, I don't think it's true. But that is Vidal's viewpoint, and he is certainly free to express it. The trouble is, he does so with such cynicism, so humorlessly that his writing just isn't much fun to read. Vidal says that America is corrupt. I wonder, however, if the America he mirrors in his writing isn't simply the corrupted vision of Gore Vidal. This is H. Paul Jeffers.

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5/6/72

Guillotine in the Wings, a recent book written by Alex Karmel, is a subject of political revolutions and their parallels. Here's a review of Guillotine in the Wings by WINS reviewer H. Paul Jeffers.

One of the most overused words in our language today is "revolution." Everything is a revolution, from new automobile styles to sex. Well, are we having, or are we going to have a political revolution? Author Alex Karmel deals with that proposition in Guillotine in the Wings. Karmel looks for, and finds, some parallels between America today and France at the time of its bloody revolution. He tries to make a case by picking and choosing from history as a parallel to current events and assumes that what he calls the first American revolution, the one in 1776, is over. My impression is that the American Revolution isn't over, that it continues through the channels that our first revolutionaries wisely devised for peaceful change, mainly the Constitution. We have amended it twenty-six times and are on the way to amending it again. Dissatisfaction, that in other countries might lead to revolution in the streets, is being voiced today in voting booths; the votes for McGovern and Wallace are evidence for that. So is the United States in for a second revolution? Author Karmel, in Guillotine in the Wings, thinks the elements are there, but he finally dodges the answer. His book of historic parallels overlooks one thing that is without historic parallel: the Constitution of the United States. It is alive and well, and as long as it is, I doubt very much that Americans need worry about a guillotine in the wings. This is H. Paul Jeffers.

5/7/72

Now WINS newsman H. Paul Jeffers reviews the new Norman Mailer, although he fails to celebrate him like the Mailer of old.

Everytime that I come across a new book by Norman Mailer, I hope it's a Norman Mailer novel. But no, the fiction shelves remain without a new work by a man who should be writing fiction. Instead, Norman Mailer gives us volume after volume of celebrations of himself. The latest by Mailer is Existential Errands, published by Little, Brown. It's chock full of essays on everything from heavyweight boxing to running for mayor of New York, all subjects as Norman Mailer sees them, which is O.K. I find it interesting to know what Norman Mailer thinks. But I can't forget Norman Mailer, novelist, author of The Naked and the Dead. I wish he'd get back to novels. Perhaps he doesn't write them because he feels novels are a field in which he has no competition. Maybe it's just that he doesn't want to write about someone else. Norman Mailer's favorite subject is Mailer. But Norman Mailer is--was--such a terrific novelist that I'd settle for any novel by Norman Mailer, even if it turned out to have Norman Mailer as the main character. This is H. Paul Jeffers.

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5/13/72

Now WINS's H. Paul Jeffers, with a review of the new book entitled Power Through Subversion.

It was in a 1946 speech that Winston Churchill gave us the phrase "Iron Curtain." But in that same speech, Churchill had some thoughts on what the Communists were doing in front of that curtain.

[Tape of Churchill:] "Communist fifth columns are established and working ...in absolute obedience to the instructions they receive from the Communist center."

Fifth columns and subversion have been part of man's history as long as war. But a new book on the subject says the U.S. has not been making use of subversion as it should. Historian Lawrence Beilenson says the Vietnam War could have been avoided if the U.S. had used subversion the way the Communists do. The book is Power Through Subversion. It sounds like a forbidding, weighty book, but Beilenson writes persuasive prose that is easy to read, and of course he deals with an always intriguing subject. He urges the U.S. to back dissidents in the Communist world, supporting their efforts to overthrow Communist governments. He convincingly suggests that this would have been a far better course in Vietnam than conventional warfare. He deplores the fact that there wasn't a U.S. supported guerilla movement in the North, just as there is the Viet Cong in the South. There is no question that subversion is an active pursuit of Communist powers. Lawrence Beilenson says the U.S. must keep pace if we are to avoid future Vietnams. For any serious student of world politics, Power Through Subversion is must reading. Are you listening, Mr. Kissinger? This is H. Paul Jeffers.

5/14/72

Abe Fortas hasn't been a Supreme Court justice for almost 3 years. Two nominees since then have been rejected. The story behind the Supreme Court and its selection is the subject of a new book reviewed now by WINS's H. Paul Jeffers.

One day in July, 1965, President Lyndon Johnson made this announcement:

[Tape of Johnson:] "I am happy today in the East Room to announce that the distinguished American who was my first choice for the position now vacant on the Supreme Court has agreed to accept this call to this vital duty. I will very shortly, this afternoon, send to the United States Senate the nomination of the Honorable Abe Fortas to be an Associate Justice of the Supreme Court."

No one was surprised that Lyndon Johnson would appoint his old friend Abe Fortas to the Supreme Court. The surprises came later when scandal forced Fortas off the Court and opened the way

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for the new Nixon administration to begin reshaping the character of the Court. Reporter Robert Shogan gives us all this history in A Question of Judgment: The Fortas Case and the Struggle for the Supreme Court, published by Bobbs-Merrill. This important book is more than the Fortas case. Shogan also touches on the later battles over Nixon nominations to the Court and the fierce partisan opposition to them. What is clear in Question of Judgment is how the Supreme Court has been dragged into politics. In less than three years, one justice has been forced to quit, two Republican nominees were rejected by the Democratic Senate in losing partisan battles, another justice was threatened with impeachment, the President was forced to describe three potential nominees, and the nomination of William Rehnquist provoked the bitterest fight in 40 years. All of this because the procedure for putting men on the Court has turned more on political partisanship than judicial qualification. Richard Nixon wants one kind of Court; Democrats want anything but a Nixon Court. The result is, in the words of Robert Shogan, "an undermining of respect for the law and the diminishing of the Court as an institution, with the Republic the loser." This is H. Paul Jeffers.

5/20/72

...41, time to hear from WINS editor H. Paul Jeffers, who also is establishing a reputation as a writer of books and as a reviewer of the products of other authors.

Last Monday, I was working my way through two new books about Senator Edward Kennedy. One was The Education of Edward Kennedy, by Burton Hersh, published by William Morrow; the other was Ted Kennedy: A Portrait of Survival, by William Honan, published by Quadrangle. Both books give us the familiar Ted Kennedy history: the cheating incident at college, the death of two brothers by assassination, Chappaquiddick, and, "Would he be a candidate for president this year?." The answers seem to be that he would, if: if the Democrats deadlocked, if it looked like only he could beat Nixon. Reading the books, it was easy to see Ted Kennedy coming forward in Miami, as the badly divided Democratic convention rose to its feet chanting, "We want Ted"; thousands of delegates reaching out to Jack and Bobby in the form of their brother. And then late in the afternoon last Monday came a bulletin, and I learned that a gunman had shot George Wallace. Then, with these two books about Ted Kennedy, what came to mind was Ted Kennedy standing in St. Patrick's Cathedral in 1968, speaking at the funeral for Robert Kennedy.

> [Tape of Ted Kennedy:] "Those of us who loved him and who take him to his rest today, pray that what he was for us, and what he wished for others, may someday come to pass for all the... world. As he said many times, and many ...this nation, to those he touched, and who sought to touch him, 'Some men see things as they are and say, "Why?"; I dream things that never were and say, "Why not?".'"

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In nine years, two Kennedys have been murdered. That, I think, must be the overriding thought in Ted Kennedy's mind today. He feels deeply about his obligations to his family and his brothers' families. It may be th.t he will ignore the possibility of a Dallas, a Los Angeles, or a Laurel, Maryland in his future, and run this year. But these two books tell us that Ted Kennedy is young, and that 1976 is not that far away. This is H. Paul Jeffers.

5/21/72

With the Moscow summit about to begin, bookstores in the U.S.A. are brimming with books about Richard Milhous Nixon. H. Paul Jeffers has winnowed through the selection. He's found a mixed bag, and he's singled one out, In Search of Nixon.

Richard M. Nixon is on his way to Moscow. He's been there before. In 1959, as Vice President, he had a famous debate in a kitchen with then-Premier Nikita Khrushchev.

> [Tape of Nixon:] "There must be a free exchange of ideas. There are some instances where you may be ahead of us, for example, in the development of the thrust of your rockets for the investigation of outer space. There may be some instance, for example, color television, where we're ahead of you. But, in order for both of us...[mixture of undecipherable English with Russian]."

With President Nixon heading for Moscow, bookstores are offering a variety of books about Mr. Nixon, some good, some not so good, some pro, some con, and one of them, a lot of boloney. The title is In Search of Nixon, subtitle, A Psychohistorical Inquiry, by Bruce Mazlish... Why did Nixon order the blockade of Haiphong? Because he was a failure as a football player in school. Why does Nixon get tough with the Russians? Because he needs crises, because he has a masculinity hangup. To make those assumptions, you would also have to assume that Franklin Roosevelt got tough with Hitler because he was hung-up over being in a wheelchair, or that Harry Truman got tough with the Russians because Truman was a failure as a haberdasher, or that Jack Kennedy confronted the Russians in the Cuban missile blockade to make up for the psychological trauma he suffered when he lost P.T. 109. Presidents are people, and their psychological underpinnings are fair game. But In Search of Nixon is a lot of nonsense. This is H. Paul Jeffers.

5/28/72

WINS newsman has another book review now, one about a colorful New York City congresswoman.

This is a review of a book about a woman in the House, the House of Representatives, that is. The book is titled Bella!, and guess who it's about. Subtitle is Ms.--M-S, that is--Ms. Abzug Goes to-

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Washington. The book is done in diary fashion, and it is pure Bella. She gets right down to it in her introduction, acknowledging that she has been described as a tough and noisy woman, a prizefighter, a manhater, impatient, impetuous, rude, profane, brash, overbearing, a Jewish mother with more complaints than Portnoy, and she warns, "I am a very serious woman." She says, it is no joke to her that women in this country are terribly oppressed.

[Tape of Bella Abzug:] "Women are the majority of the population. For 50 years, we've had the vote. And for 50 years, we have used it to elect men only. But no more. We are organizing to demand equal representation in government and decision-making roles, and political leaders everywhere should recognize that we will no longer let ourselves be kept out or kicked out."

As political biographies go, Bella! is a readable book, interesting because the main character is interesting. Bella Abzug's diary of her first year in Congress comes out in the midst of her campaign to win the Congressional seat held by William Fitz Ryan, a like-minded Democrat. She writes in her epilogue, "No other Congressman has the commitment to activism" that she has. I render no opinion on that claim; that's the job of the voters. This is H. Paul Jeffers.

5/27/72

Paul Jeffers of WINS now. A review of the book, Spy Trade.

In the warm blush of the Moscow summit of 1972, it's easy to forget the atmosphere of mistrust and espionage that has existed between the United States and the Soviet Union.

[Tape of Gary Powers, U-2 pilot, in Russia]

That was the voice of Francis Gary Powers, on trial in Moscow in 1960, after his U-2 plane was shot down in Russia. It would be foolhardy to believe that espionage ended as the cocktail glasses were being raised in friendly toasts at the Kremlin this weekend. One aspect of international espionage that we don't speak about much is the lively trading in spies that the United States and Russia have carried on for years. Powers himself was traded for Rudolf Abel in 1962. Abel was the top Russian spy in America. The story of that exchange is well-known and has been written about by several people, including Powers. But there have been many other, less publicized trades. These are told in a fascinating book titled Spy Trade, by E.H. Cookridge, published by Walker & Co. These are compelling real life spy thrillers. The point Cookridge makes is that the Communists often take hostges, often innocent people, to have commodities for bargaining when their own spies are caught.

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The taking of hostages for the release of political prisoners and spies is a growing business, not a declining one. Spy Trade, by E.H. Cookridge, is the book that will tell you all about this shady business and keep your feet on the ground in the heady atmosphere of summitry. This is H. Paul Jeffers.

6/4/72

Coming up next, another of H. Paul Jeffers's book reviews. This time, he takes a close look at Ordeal By Trial.

Scratch a reporter, and beneath his skin you'll find a person whose dream is to turn a reporting assignment into a book. If it happens to be a sensational murder story filled with sex, so much the better. That kind of story is relatively rare. In fact, when the Journal-American was still in business, reporter George Carpozi, Jr. got just such an assignment. It started with the mysterious disappearance of two children and quickly turned into a murder case, with the mother going on trial not once, but twice, before being convicted of the deaths of her two children. The case, of course, was that of Alice Crimmins. The book is Ordeal By Trial, a history of the Crimmins case. I, like most New Yorkers, followed the case all along, over a seven-year period. But in Carpozi's book, the seven years are crammed onto pages that you'll read in a couple of hours. I guarantee you, you won't put this book down quickly. Nor will you read it satisfied that you now know all of the answers. Is Alice Crimmins guilty. Two courts say that she was. Why did she do it, if she did? The reasons remain unclear. At the end, Carpozi offers an explanation from one of the central figures in the case, that it was done to avoid a scandal touching a major political figure. The Alice Crimmins case was a shocking one. The shock is still there in George Carpozi's book. If you like a mystery, and are moved by human tragedy, read Ordeal By Trial, by George Carpozi, Jr. This is H. Paul Jeffers.

6/10/72

Now, a WINS book review, with H. Paul Jeffers.

Unless you've been at the bottom of a very deep well this week, you know that we are smack in the middle of a presidential election year, and you may be wondering right now whether it's worth all that high-flown rhetoric. Well, that's the way we do it. There are some among us who say that the way we do it is not so hot and that we ought to change our political system. In answer to those suggestions there is a book published by Chelsea House, and McGraw-Hill, called The Coming to Power, edited and with an introduction by Arthur M. Schlesinger, Jr. The book is a collection of essays on past presidential elections, fifteen of them, each important for one reason or

another. You might wonder why some elections were omitted and why others were included. The truth is, The Coming to Power is a condensation of a four-volume work that covers all the elections. But this single volume book is a tasty compilation of some of the more interesting presidential years. The individual essays are written by historians as well as insiders and will give you a fresh perspective on the way we choose presidents. You'll also discover that this year's rhetoric isn't all that new. "It's time for a change" has been a slogan in a lot of elections. Is George McGovern an echo of Goldwater in 1964, or is he closer to the FDR of 1932? Is Nixon's dilemma this year a lot like Lincoln's in 1864? Both men with a war they want ended, but apparently no way to do it short of more war. The Coming to Power may help you to look at this years election the way historians will do it some years from now, and it should convince you that, with all its faults, our political system works and works well. This is H. Paul Jeffers.

6/11/72

Now, book reviewer H. Paul Jeffers and his thoughts on a new book on the life of Al Capone.

One of last year's big bestsellers is out now in paperback. It's a biography of Al Capone. Capone was written by a gentle, quiet, studious man named John Kobler. Mr. Kobler is a journalist who's had a long interest in crime reporting and in writing biography. He did one of Henry Luce of Time, Life, and Fortune. But the book that John Kobler is most likely to be remembered for is Capone. It is a microscopically detailed portrait of the Prohibition era's most famous mobster, from Capone's boyhood in Brooklyn to his death in a federal penitentiary. Kobler's best writing deals with the environment in which Capone grew up and the murderous climate of Chicago where he was to rise to murderous fame. I don't say infamy, for as Kobler points out, when Al was at his peak, he was famous, not infamous. He was a hero, not an anti-hero. When author Kobler focuses on Capone, the book is fascinating; when Kobler writes of the intricate gang networks of Chicago and their rivalries, the reader tends to be overwhelmed in detail, more than you'd care to know about lesser gangland fiefdoms. Nonetheless, Capone is an exciting book, giving you the gore of the St. Valentine's Day Massacre, and wrapping that horrible event in a detailed and illuminating picture of the era that could spawn a Capone, who could give the orders to kill as easily as he bought tickets to the opera. This is H. Paul Jeffers.

6/17/72

"Down to the beach with books." Here's a summer number that sounds attractive, according to this review by H. Paul Jeffers.

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A rich tradition of the literature of the English language is devoted to stories of men who go down to the sea in ships and what happens to them: Moby Dick, Billy Budd, and the mutinies on H.M.S. Bounty and U.S.S. Caine, for instance. A new novel published by St. Martin's Press is right in line with this tradition of tales of struggle aboard ship. The novel is The Moonraker Mutiny, by Anthony Trew. Mr. Trew is a veteran of the sea, having served in World War II, much of that time on convoy duty to Russia. In his novel, Moonraker is a cargo ship outward bound from Australia, under command of a good captain who has only one flaw--his addiction to alcohol. While under the influence, the Captain makes some bad judgments about the course of a killer cyclone, and Moonraker winds up smack in the middle of the storm. Diabled, without power or radio, she drifts until mutinous crewmembers decide to abandon the ship and the Captain. From then on, it's a story of survival in open boats and survival aboard the derelict Moonraker. Later, there's a dramatic confrontation between two rescue ships which want to take Moonraker in tow for salvage. Weave into all this the personal stories of the book's characters, and you have high adventure on the high seas. I found it lively, exciting, and even educational. The Moonraker Mutiny, by Anthony Trew, is good summer reading--by the seaside, of course. This is H. Paul Jeffers.

6/18/72

Now book reviewer H. Paul Jeffers and his thoughts about a new novel called The Mountebank.

Writers write out of their own experience, and for young writers, set upon their first book, it's likely to be about school. There's a whole genre of these books; The Catcher in the Rye the most notable. Last week, I came across a new one in this vein by a young writer named Duncan R. Wallace. The book's title: The Mountebank. The story is set in a prep school in transition from tranquillity of the early '60s to the turmoil of the middle and late '60s. The mountebank of the title is a rascal who serves things up, a compulsive prankster. The Mountebank is a funny book, and a sad one. It leaves you with a desire to read more fiction by young Duncan Wallace, but unfortunately that can't be. He drowned immediately after finishing this manuscript. Knowing this history, you begin to read the novel as the story of its author, because it is clearly written out of his own experiences at school. And you feel very glad that he wrote the book. You also feel grateful to Houghton-Mifflin for publishing it. Publishers usually print books by authors because they expect to publish succeeding books by them. So it took a fair amount of decency and courage to publish Mr. Wallace's book, knowing that there wouldn't be any more. I like The Mountebank, and I recommend it. I'd like to say more about the author, and what I would like to say I find that Duncan Wallace has written for me in the last words of his novel: "In my mind, he will always live like a character in a fairytale, and looking back, it seemed like a typically appropriate gesture on his part to die so young that the dream would never tarnish and fade. This is H. Paul Jeffers.

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6/24/72

All you ever wanted to know about sand castles and real castles. WINS newsman H. Paul Jeffers tells all about it in his review of a book, The Art and Industry of Sand Castles.

Someday, when the weather finally clears and the sun comes out, you may think about going to the beach. Sooner of later, your kids, or you yourself, may decide to build a sand castle. To be prepared for this, I suggest you first get your hands on a book by Jan Adkins, titled The Art and Industry of Sand Castles, published by Walker & Co. for kids. But like most kids' books, adults can get something out of this. Here's all you ever wanted to know about sand castles, done with charming illustrations by the author and with some snappy one-liners to go along with the pictures. This is not just a how-to-do-it book. You'll learn how to build a sand castle, but you'll also learn about real castles--who built them and why, and why they built them that way. At the beginning, author Adkins asks, "What is a sand castle?" He answers, "It is your private legend, a fortress made of sand and imagination for your own heroes, a stronghold for your daydreams. It is the strong desire to build, to create forms with your own meanings. It is most of all your own, out of your head, made by your hands." The rest of the writing in The Art and Industry of Sand Castles is in that vein. Summer is the time for building castles in the air or in the sand. If you choose sand, start with Jan Adkins's book, The Art and Industry of Sand Castles, published by Walker. This is H. Paul Jeffers.

6/25/72

WINS book reviewer H. Paul Jeffers, constantly looking for informative books, has another for your consideration. It's called The Dinosaur Fund. It's interesting.

In the past few years, many small individual investors have gotten out of the stock market, leaving Wall Street largely in the hands of giant investment funds.

> [Tape of Vartanig G. Vartan:] "Big funds, banks, pension funds, mutual funds, colleges account for the bulk of trading activity, and they get their advice, many of them, from a couple hundred money managers."

That was Vartanig G. Vartan, expert on Wall Street and financial writer for the New York Times. Vartan is the author of a new novel, The Dinosaur Fund, which deals with a gigantic struggle between Wall Street money managers.

> [Vartan:] "Dinosaur Fund is a growth stock fund which has about $250 million in assets. Its portfolio mainly consists of

growth stocks, and the counterpart fund in the novel is the Cavendish Fund, which is a big, billion-dollar balance fund with both stocks and bonds, and the contest is between the agressive fund, the Dinosaur Fund and the more conservative Cavendish Fund."

The outcome of the battle is the cliffhanger in Mr. Vartan's novel, and I won't give it away. The Dinosaur Fund is . . Vartan's second novel. The first was 50 Wall Street, which was a bestseller a couple of years ago. Vartan writes with real authority about the ins and outs, the ups and downs of Wall Street, and what happens with what Wall Streeters call OPM--that's Other People's Money. Once you read The Dinosaur Fund by Vartanig Vartan, published by McGraw-Hill, you may prefer to get your Wall Street kicks from Mr. Vartan's novels rather than from the manipulations of money managers using OPM. This is H. Paul Jeffers.

7/2/72

There's no question that a man named D.W. Griffith was responsible for revolutionizing the movie industry. Robert N. Henderson has done a complete biography of D.W. Griffith. WINS book reviewer H. Paul Jeffers was impressed and he explains why.

I had a film course in college in which the professor showed the uncut, three-and-a-half hour silent film, "Birth of a Nation." He used the film as a way of finding out who was really interested in the film and who was in the course because he thought it was a snap. Those who stayed the whole time were dedicated. It takes a devotee of the film to sit through "The Birth of a Nation." The movie by D.W. Griffith first went on the screens in 1915. It was inventive, innovative and revolutionary. Every movie you see today owes something to Griffith and "Birth of a Nation." Film historian Robert N. Henderson has given us a biography of Griffith that does justice to the man and his work. That work was prodigious and often spectacular, with such films as "Intolerance" and "America," which incidentally is being shown over this holiday weekend by Channel 13. Robert Henderson is a noted film scholar and historian, and the chief of the general Library and Museum of the Performing Arts at Lincoln Center. His previous book on Griffith covered Griffith's years at Biograph Studios. In this new book, he covers Griffith's whole lifetime: school dropout, touring actor, movie director. And the book gives us Griffith's last days, when he was lonely and ignored by the industry he revolutionized. I suggest you catch D.W. Griffith's "America" this weekend on Channel 13, then read a fine book about that great man of film, D.W. Griffith: His Life and Work by Robert N. Henderson, published by Oxford University Press. This is H. Paul Jeffers.

7/1/72

Papa's back in print, and that's a good thing, according to this review by H. Paul Jeffers.

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It is a sad thing when a great author dies, but a joyous thing when we discover unpublished material he left behind. Ernest Heming-- way left a lot of material behind, some finished, some unfinished, and among that material were eight manuscripts related to Hemingway's famous Nick Addams stories. These have now been included in a new addition of the Nick Addams stories published by Charles Scribner's, Son, with a helpful preface by Philip Young. The eight new additions have been integrated into the familiar Nick Addams stories, with the whole of them arranged so as to give the stories chronological order. Now, in one volume, we can follow Nick Addams on his journeys from the American Midwest to New York and to war. I've always liked the Nick Addams stories more than anything that Hemingway wrote. The first of the stories was published almost half a century ago, the last in 1933. It was a delight, therefore, to read eight new Nick Addams stories, even though some are quite short and others left dangling in mid-air, unfinished. Woven into the fabric of the previous stories, though, the new ones fit nicely, like the parts of a beautiful picture puzzle that had somehow been lost a long time. The book jacket notes say that the republication of The Nick Addams Stories with new material is a literary event of considerable. caliber. I couldn't agree more. This is H. Paul Jeffers.

7/8/72

H. Paul Jeffers, who frequently presides at the editor's desk here at WINS,is a man of seemingly unlimited talents. In addition to his invaluable assistance among us, he is a college teacher, an author, and a book reviewer with a keen appreciation of humor. Witness this report on a book well worth reading.

One of the funniest plays I ever saw was "The Man Who Came to Dinner," one of the funniest movies, "The Solid Gold Cadillac." Both these bore the name of George S. Kauffman, a playwright who collaborated with lots of other writers and gave us a body of dramatic literature that has in it some works that are now classics. One of Kauffman's collaborators was Howard Teichmann, who has written a biography of the late George S. Kauffman that has all the style and flair and wit of the man it remembers. If you want some laughs, read it. If you want to learn something about American theater, read it. If you want to come up against true wit, read it. Some examples of that Kauffman wit: Asked what he was doing for dinner one night, Kauffman replied, "Digesting it." In an expensive restaurant, he was asked, "What can you get in this place for fifty cents?" Answer: "A quarter." A self-made millionaire bragged that he had started his career without a single penny. Kauffman: "When I was born, I owed twelve dollars." Some legendary lines from Kauffman the critic: "I saw the play at a disadvantage. The curtain was up." "There was laughter in the back of the theater, leading to the belief that someone was telling jokes back there." A press agent once asked him

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how to get a certain leading lady's name in the paper. Kauffman replied, "Shoot her." Howard Teichmann's biography of George S. Kauffman is delightful reading, an invaluable addition to the literature of theatrical history. Like a George S. Kauffman play, the book is a gem. George S. Kauffman: An Intimate Portrait, by Howard Teichmann, published by Atheneum. This is H. Paul Jeffers.

7/30/72

Religious books seem to be among the better sellers among young people these days. WINS book reviewer H. Paul Jeffers has been reading some of the new ones and some that have been re-published, and here are his comments:

Among all the other movements that get headlines day by day, there is the so-called Jesus Movement, a new wave of fervent evangelism being taken up by thousands of young people, many who have switched off drugs to, as they say, "turn on to Jesus." The Jesus Movement is having some attention in book publishing, and so is the centerpiece of the movement, Jesus Himself. A new book by David Kossoff, published by St. Martin's Press deals with the Jesus story through fictional people and their accounts of Him. The Book of Witnesses gives us their stories of the events surrounding Jesus' birth, the wedding ceremony at Cana where Jesus turned water into wine, and the other miracles, and the Crucifixion. This is an interesting approach, but I found it curiously unsatisfying.

In non-fiction, Fawcett paperbacks has re-issued a 10-year-old book, The Lost Years of Jesus Revealed, by the Reverend Charles Francis Potter. This book is based on Potter's studies of the Dead Sea Scrolls, which lead him to conclude that Jesus was a member of a religious sect called the Essenes, and to cast doubt on the truth of all the stories that Kossoff's eye-witnesses give us in his book. There are a number of other books all aimed at riding the tide set in motion by the Jesus People, but I've yet to find any that get to the heart of Jesus and His religion, which now encompasses about one-third of mankind. There is much literature to choose from on the subject of Jesus, but frankly I've found only four books that have had any lasting importance: Matthew, Mark, Luke, and John. This is H. Paul Jeffers.

8/5/72

WINS' H. Paul Jeffers reviews an allegory which he characterizes in his own analogous manner.

EXHIBIT R TO PAPERS IN OPPOSITION TO MOTIONS - TRANSCRIPTS OF BOOK REVIEWS OF JEFFERS

Now that it's in its fourteenth printing, at least, I've gotten around to reading Jonathan Livingston Seagull, A Story, by Richard Bach, photographs by Russell Munson. The story is about forty pages long; the pictures take up somewhat more than forty additional pages. The book is printed by Macmillan and sells for $4.95. Jonathan Livingston Seagull is a seagull with a mission, to show his love by revolutionizing the lives of other seagulls. In this, Jonathan Livingston Seagull is like other revolutionary types: Abbie Hoffman, Jane Fonda, Dr. Spock. Jonathan means to teach seagulls how to fly fast, if it kills them. Now, I like seagulls, rather, I like to see seagulls flying--very graceful. I have a couple of wood-carve seagulls in my home. So Russell Munson's photos are nice, although perhaps more abundant than the most ardent seagull fancier would wish. Author Richard Bach is an aviator and knows a lot about flying. The story's been around a long time, and like Erich Segal's Love Story, has had a tremendous sale by word-of-mouth. Jonathan is one of the biggest best sellers in the country. This is because it supposedly has a message. It's an allegory. It's supposedly touching in its message about the need for love and changing someone else's life to your pattern of living, even if they don't particularly feel the need to be changed. Having bought Jonathan Livingston Seagull for $4.95 and read the text between the pictures, I leave you with this final thought: Jonathan Livingston Seagull is a rip-off. This is H. Paul Jeffers.

8/12/74*

WINS's H. Paul Jeffers now, with another book review. This one deals with "what happened."

You may not recognize the name Merle Miller, but you probably heard about, or even read, his best-selling book a couple of years ago, Only You, Dick Daring: A Look Inside Television. A year or so ago, Merle Miller wrote an article for the Sunday Times Magazine declaring that he was a homosexual, then going on to write about what it's like to be a homosexual in America. Now, Merle Miller reportedly says his latest book is getting the cold shoulder from reviewers, because of, he says, that article in the Times. The book is a novel entitled What Happened, and its theme, as you might expect, is homosexuality. It's the story of George Lionel, a world-famous pianist, who has found his gay life is anything but gay. George Lionel doubts that he is loved or worthy of love. I found What Happened to be a depressing book, not because of its theme of homosexuality, but because the main character came across as a cry-baby. At one point he says, "There has never been a single day in my life, not an hour, when I wouldn't have gone to any length to avoid meeting me. I'd rather die than meet me." Well, it's no wonder nobody loves George. Love needs a measure of self-appreciation. I don't think Merle Miller needs to worry about whether his novel gets reviewed. I'm sure it will

sell well among the gay community, many of whom will probably diagree with Merle Miller's character's view of how it is to be gay. The book is What Happened, by Merle Miller, published by Harper & Row. And speaking of Harper & Row, a brief comment on a news item this past week, about a book on the CIA which Harper & Row is publishing. The controversial manuscript was submitted to the CIA before publication, an event which author Alfred McCloy correctly protested. The galleys were submitted by Harper & Row because the CIA's lawyer asked to see them. I find that an awful thing for a publisher to do. I'm H. Paul Jeffers.

8/19/72*

There's a new book out on the New York City Police Department. H. Paul Jeffers has just finished Report to the Commissioner, and he likes what he found.

James Mills is the author of Panic in Needle Park and The Prosecuto both of which gave him a good working knowledge of cops and the drug scene. Mills has used this knowledge in a crackling good story in his new novel, Report to the Commissioner. The book takes the form of a report to the Commissioner of the New York Police Department, in documents and interview transcripts, following the killing of one undercover detective by another. One is the youngest undercover cop in the department, the other, a beautiful young woman. She's the one who's killed; just how, the book explains. I usually find books written like documents tedious, but Report to the Commissioner will have you riveted to every page, especially when the action gets to a stalled elevator at Saks Fifth Avenue, with a cop and a drug dealer inside holding guns on each other. How would you get them out. I am told Report to the Commissioner will be a movie. I can hardly wait to hear what Bob Salmaggi has to say about it. In the meantime, I heartily recommend that you read Report to the Commissioner by James Mills, published by Farrar, Straus & Giroux, $6.95. I'm H. Paul Jeffers.

8/27/72*

Book reviewer H. Paul Jeffers now, with some appreciative thoughts on a new book called The Night of Long Knives.

Now that the summer Olympics have opened in Munich, we are reminded almost daily of the last Olympiad in Germany, at the peak of Adolph Hitler's rise to the control of Germany. Hitler came to power largely because of a band of bullies which soon grew to the size of an army. Indeed, they were his private army, the Sturmabteilung--the S.A.--the Brown Shirts. Thousands of them, under the leadership of Ernst Rohm, carried Hitler to power. But by 1934, Hitler needed the support of others. So he made a deal to sacrifice the S.A. to insure his own glory. In one bloody night, he wiped out the leadership of the S.A. to consolidate himself as the unchallenged

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TRANSCRIPTS OF BOOK REVIEWS OF JEFFERS

Fuehrer. The bloody tale of how Hitler did this, and why, is the subject of a new book by Max Gallo, The Night of Long Knives, published by Harper & Row. It's a grim story of one man's megalomania and thirst for power, how he betrayed his oldest and most loyal political allies, and the trumped up charges he used to justify it to an all too-eager German people. No understanding of Hitler's Germany is possible without an understanding of the purge of the S.A., on the night of June 29-30, 1934. Max Gallo has written a history of that night brilliantly. The Night of Long Knives, by Max Gallo, Harper & Row, $8.95. My name's H. Paul Jeffers.

9/17/72

Well, another book by Walter Lord, and another review by H. Paul Jeffers.

It takes a very special writing talent to take a big historical event and put it into a book that reads like a novel, a talent brilliantly exercised by Walter Lord, who has given us in the past the story of the sinking of the Titanic in A Night to Remember, the Battle of Midway in Incredible Victory, and the pre-World War I era in The Good Years. Now we have a new Walter Lord book, on another epic subject, the War of 1812, our second war of independence. The book is The Dawn's Early Light, words of "The Star-Spangeled Banner," written by Francis Scott Key, who was inspired by the gallant defense of Fort McHenry in September, 1814. Lord gives us people other than Key: President Madison, the commanders on both sides, a fellow named Sam Smith, among the defenders of Baltimore, the bickering members of the President's cabinet, the soldiers, the sailors, the common people, all of whom played a part in three eventful days, September 12-14, 1814, as the War of 1812 centered on the siege of Baltimore, and where, in"the dawn's early light," Francis Scott Key looked up and saw the fifteen stars and fifteen stripes of the flag still hoisted above the fort, symbolizing a whole new sense of national identity for the United States. If you like popular history, written by a master, read The Dawn's Early Light by Walter Lord, published by Norton, $8.50. I'm H. Paul Jeffers.

9/24/72

And now, WINS's book reviewer, H. Paul Jeffers, discusses Luce and His Empire.

What do these three men have in common: Joseph Pulitzer, William Randolph Hearst, and Henry Luce? The answer? W.A. Swanberg. All three have been subjects of biographies by Mr. Swanberg, whose newest book about the great American journalists is the Luce book, Luce and His Empire. One is tempted to make comments such as, "this is a very timely book," or, "here is a life worth reading," all of which are true, if bad puns. Luce and His Empire is a massively detailed and engrossing

biography of the founder of Time, Incorporated, a man whose personal views were stamped on Time, Inc.'s journalism, the man whose magazine looked at the world with a special vision, which mixed opinion with fact, and which brought zest to the news of the week, as Henry Luce determined it. He made no bones about who ran his magazine. He sent out a memo once stating, "The chief editorial policy maker for Time, Inc. is Henry R. Luce, and that is no secret which we intend to conceal from the ouside world." The policy that Luce made was solidly anti-Communist, pro-Chiang Kai Shek, staunchly pro-American, because these were the things Henry Luce believed in. If any biographer could match the challenge of writing Luce's life, it had to be W.A. Swanberg. It's a massive book full of detail, much of it not published before. Luce and His Empire, a Book-of-the-Month Club selection, is published by Scribner's at $12.50, and if you'll pardon another pun, Mr. Swanberg is going to make a fortune. This is H. Paul Jeffers.

10/8/72

Now a WINS book review from editor H. Paul Jeffers.

Regular viewers of Channel 13 have followed the perceptive commentaries and lively discussions of Eda LeShan on news programs and on "How Do Your Children Grow?" In these, she has talked mostly to parents, but in the new book, published by Macmillan, Eda LeShan talks to children, trying to answer the question in the title of her book, What Makes Me Feel this Way?. The book is about feelings and the trouble kids have coping with them. Mrs. LeShan begins by letting children know that everybody has feelings, some good, some bad, some desirable, some not so desirable, unless a person can learn to control them. Mostly, it's a commonsense book for dealing with the emotions of growing up. It doesn't lecture or scold, it just says, "this is how people feel, especially in the process of growing up." And here are some ideas about how to handle those feelings. From there, What Makes Me Feel this Way? goes on to deal with what the author calls "the very best kind of feeling," the most important one, which is the feeling that you are being yourself. The point: No one can feel good about being himself unless he knows himself. What Makes Me Feel this Way? provides a nice beginning for kids to start knowing themselves. It would be nice of you to give a copy of this book to some child you know. You'll feel good about it. What Makes Me Feel this Way, by Eda LeShan, published by Macmillan, $4.95. I'm H. Paul Jeffers.

10/15/72

Fast followers will find this review of the author's latest book interesting. The Hessian is reviewed by H. Paul Jeffers.

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TRANSCRIPTS OF BOOK REVIEWS OF JEFFERS

Over the next four years, we are going to be reading more and more about the American Revolution, as we approach the two-hundredth anniversary of the Declaration of Independence. Already, publishers are turning out books about the people and events of the Revolution. After quite a few years, one of the best writers of fiction about that period has returned to that subject. Howard Fast has given us a touching novel titled The Hessian, a tiny event amid the vast panorama of the American Revolution. The story unfolds in Connecticut, where a troop of Hessian mercenaries on a scouting march hangs a local citizen they suspect of spying. The unfortunate victim is mentally retarded, harmless and bewildered. Outraged, the local citizens ambush the Hessians, massacring them, except for one. A sixteen-year-old drummer-boy escapes, is wounded, and taken in by a Quaker family, and then taken in by a Catholic doctor who tells the story. Finally, the whole apparatus of Colonial justice turns on the Hessian, a hapless boy caught up in a war that is not his, and that he doesn't really understand. The question is, can humanity triumph in this explosive situation, or will war's brutality be unleashed on this defenseless foreigner in the American war? Of course, I won't tell you the answer. Howard Fast writes beautifully, with compassion for both sides, in a book you won't forget. I hope you'll read many books about the American revolution over the next four years. A good way to start is with The Hessian, by Howard Fast, published by Morrow, $5.95. I'm H. Paul Jeffers.

10/22/72

Well, in these days when corruption stories appear almost routinely in the news, it's topical, to say the least, to come across a new book dealing with a payoff, as it goes from the mob to a politician. H. Paul Jeffers has a review.

The allegations that some political figures have been mentioned in tapes made in that mobster trailer in Canarsie probably came as no surprise to anyone. Crime and corrupt politicians have been linked all through history. But few of us understand the sinister ways in which organized crime worms its way into government. Most common is the Payoff, which is the title of an eye-opening book by Michael Dorman, a newsman who has worked for the Daily News, the Post, and Newsday. Payoff is a hard look at the mob and the pols, and the dirty business that brings them together. Some of the cases will be familiar to WINS listeners: the Marcus case, the Addonizio scandals, and the sensational charges against Congressman Gallagher of New Jersey. But there's more in Payoff, tales from other parts of the country where the mob is at work corrupting government officials. And not just government officials, but private citizens, too. The mob often moves in and takes over legitimate businesses in order to bleed them of their assets and leave the stockholders holding the bag. In Payoff, Michael Dorman rounds out his case histories with some suggestions on what could be done, from tightening campaign contribution laws to special prosecutors, like the

one just established in New York to root out official corruption. Payoff is a valuable book. It might have been shocking if we all hadn't become immune to being shocked by events like those surrounding that beat-up old trailer in Canarsie. The book is Payoff, by Michael Dorman, published by McKay, $6.95. I'm H. Paul Jeffers.

10/29/72

The next voice you hear will be that of our resident hobgoblin, book reviewer H. Paul Jeffers.

With Halloween only two days away, I offer for your consideration two new books, one a novel, the other a scholarly examination of a spooky subject. The novel is The Hunter's Moon, by Nathaniel Benchley. Like his late father, Robert, Nathaniel Benchley is a humorist, and his new novel is of the black humor variety. The story centers on a New England town mobilizing to defend itself against a mad killer of young girls. The town defending itself was the theme in a previous Benchley book, The Off-Islanders, which became the movie, "The Russians are Coming, The Russians are Coming." Good Halloween fiction; The Hunter's Moon, by Nathaniel Benchley, Little, Brown & Co., $6.95.

If you want real-life scariness, I suggest The Natural History of the Vampire, by Anthony Masters. Here are all the vampires of fiction and film we've come to know and love, plus genuine varieties: weird people who believed they were vampires and promptly set out to prove it. Masters explains the basis of vampire mythology, for example: In the era of the Black Plague, a lot of people were assumed to be dead but were only in comas. On the way to the undertaker's or the cemetery, some of these people revived, giving rise, if you'll pardon my black humor, to stories about the dead returning to spook the living. The Natural History of the Vampire, published by Putnam, $7.95. Happy Halloween. I'm H. Paul Jeffers.

11/5/72

Well, with the political season about to peak on Tuesday, what better time to put out a book on one of our former presidents and war heroes than now. With a look at the new work titled Eisenhower, here's H. Paul Jeffers.

Twenty years ago, Americans were choosing a president.

[Tape of Eisenhower campaign song, nomination at Republican convention, and some words of acceptance by Eisenhower.]

In the twenty years since Eisenhower launched what he called his "crusade for America," a lot has happened, including the re-evaluation of Eisenhower as president. During his two terms he was laughed at by some, who put him down as an inept chief executive. But now,

twenty years later, we're hearing different words from those quarters. Ike is often quoted, and at length, by those men who were his political foes two decades ago. You rarely hear the old putdown of the Eisenhower years as "the bland leading the bland." Until now, the only writing we've had of the Eisenhower years has been by members of the two Eisenhower administrations of political hatchet-jobs. Well now, City University historian Herbert Parmet has given us a huge and convincing biography of Eisenhower, the political leader and president. The image we get in Eisenhower and the American Crusades is of a man who was anything but a hayseed or a political bumpkin. He was a man as shrewd as his opponents and as wily as his detractors, a man who knew how to make things work--the things he wanted to work-- a president who knew how to find the handles of power and when to use them. Professor Parmet says Ike was not a political genius, just a president who knew what the people wanted and how they wanted it. Ike was dignified, proud, and a stabilizing force in an era that was not, as some would have you believe, placid and drifting. Professor Parmet concludes by saying that to label Ike as a great, or even a good or a weak president misses the point. He was necessary. This richly illuminating book is by Herbert S. Parmet, published by Macmillan at $12.95. Eisenhower and the American Crusades. I'm H. Paul Jeffers.

12/3/72

The release of former Tammany Hall boss Carmine DeSapio from jail a few days ago prompted book reviewer Paul Jeffers to go back and re-read The Last of the Big Time Bosses, and here's his review:

Last Friday, Carmine DeSapio got out of jail and went home to Greenwich Village, where for years he had been a political boss, probably the last of the big time bosses. There he was again, his picture in the paper, distinguished in appearance, his weak eyes shielded by the dark glasses that became his familiar identifying characteristic through all the years that he was the boss of Tammany Hall. The release of DeSapio from a federal jail, where he served time on a conspiracy conviction, brings to mind a book published last year, and one which still deserves attention. It was written by Warren Moscow, published by Stein & Day. The title: The Last of the Big Time Bosses: The Life and Times of Carmine DeSapio and the Decline and Fall of Tammany Hall. It tells how DeSapio rose from the position of state assemblyman at age 30 to head the Tammany Democratic machine, and to rule Democratic politics in New York City for 20 years. It is about politics in our big city, the patronage, the underworld characters lurking in the shadows, the wheeling and dealing, and ultimately, the fall of a man who made it big by knowing where to get power, how to use it, and how to hold it. With the DeSapio final fall was a charge of conspiring to bribe Water Commissione James Marcus, the first scandal of the Lindsay administration. Americans have always seemed to admire political skulduggery, provided characters who cross over to the other side of the law but then, to soothe our own consciences, we expect them to eventually pay off by going neatly to jail. When they come out of jail, we all feel rather embarrassed. Carmine DeSapio's story is not just his, but ours, and you can read it in The Last of the Big Time Bosses, by Warren Moscow. It was published by Stein & Day a year ago, so you may have to ask for it at your bookstore. I'm H. Paul Jeffers.

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EXHIBIT W TO PAPERS IN OPPOSITION TO MOTIONS - EXCERPT FROM WALL STREET JOURNAL JULY 28, 1970

Book Reviewers Pan A Ruling That Taxes Free Books They Get

JUL 28 1970

One Critic Calculates Levies Will Exceed His Earnings; How About Theater Tickets?

By MARY BRALOVE
Staff Reporter of THE WALL STREET JOURNAL

Thorp Menn, book review editor for the Kansas City Star, sat down the other day and wrote one of his most blistering pieces. His blast was in a letter (which he says he'll probably never mail) to the Internal Revenue Service.

Mr. Menn wasn't quarreling over the literary style of the IRS as much as he was concerned with its message. In a crisply written passage, the IRS on June 29 ruled that books sent to a newspaper book reviewer must be declared as gross income unless he returns them to the publisher.

For Mr. Menn, this ruling means that in addition to his $12,000 salary, he will have to declare the 5,000 or so books sent to him yearly by publishers hoping for reviews. Based on the books' retail value, he estimates this would add some $30,000 to his gross income. On his total $42,000 gross income, Mr. Menn would owe the Government approximately $14,000 in taxes—or $2,000 more than he earns.

According to IRS officials, this ruling was handed down as a result of a letter from a newspaper reviewer requesting tax advice.

"Whoever wrote that letter ought to be shot!" fumes a book reviewer, who doesn't want his name mentioned for fear the IRS might want to browse through his tax returns and personal library. "He's opened a real can of worms."

Impressive Libraries

Indeed, the IRS ruling threatens to cut off the most cherished fringe benefit of a reviewer's job. Picking the best of the published crop, most book reviewers boast impressive libraries.

Publishers generally send out between 125 and 1,000 review copies of a book. In the case of most magazines and newspapers, they say they have little idea how much a good or bad review helps or hurts the sale of a book. A favorable review in the New York Times Sunday Book Review Section, however, is estimated to sell an additional 5,000 copies. As a result, the New York Times receives over half the 50,000 books published in the U.S. each year. Some publishers, hoping for some mention of their book, send as many as 10 copies of the same book to various members of the Times staff. Books that aren't picked up by the Times staff are sold by the company to second-hand book stores for a fourth of the retail price.

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Some individual reviewers also sell their review copies, and not all declare this income to the IRS. Mr. Mann recalls a book publishers convention where he met a Texas book review editor who operated a book store as a sideline.

The IRS ruling hits hardest the book reviewer to whom publishers specifically address their copies. Most publications, however, farm out reviews to free-lance writers who are paid a set fee plus the book. Publishers in these cases often address their books to the company. Thus, according to tax experts, the company rather than the individuals would have to add these books to gross income.

"Accounting Flimflam"

For the most part, the value of the books an individual reviewer receives isn't great. Reed Whittemore, literary editor for the New Republic magazine, reviews 25 to 30 books a year out of the approximately 7,800 books sent to the magazine. "Does that mean I should declare an extra $150? That's not going to make or break anyone," he says.

What publishers and newspapers worry about, however, is that the cost of accepting or returning books may be too much for some magazines and newspapers to carry. "Publishers and reviewers will be forced to go through some kind of expensive accounting flimflam in order to satisfy the more literal minds in the service," says a Random House spokesman. Other publishers fear that if the IRS ruling is enforced it may mean the end of some book review sections.

What infuriates publishers and confuses other taxpayers is the refusal of the IRS to say whether this ruling applies to record, theater or restaurant critics who receive free records, tickets and meals.

The IRS hedges, saying that the ruling technically applies only to book reviewers but that the logic extends to other taxpayers in similar situations. Those who follow the quirks of the IRS think that record reviewers might come under the same sort of ruling but that a distinction might be made between something that could be resold and something such as a meal or a ticket theater that is used up.

Tax experts admit that this distinction is a fine one and that the IRS might not acknowledge it. Publishers are hoping for a modification of the ruling on books, but, failing this, the resolution of the dispute will come through a court case.

At the moment no one is anxious to challenge the ruling in court, but if someone eventually does, tax attorneys think book reviewers would have a good case. One possible defense might be claiming exemption for books as a gift.

A book reviewer might also be able to soften the blow in another way. The ruling states the reviewer must declare the "fair market value"

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of the book, or whatever a buyer and a seller agree on. Mr. Menn of the Kansas City Star uses the retail value of books sent to him in estimating their total worth. But he could declare what a book dealer would pay him, which might range from a fourth of the retail value to an arbitrary $100 for the whole lot.

On the other hand, the fair market value of a book or a record received by a reviewer may be zero. The Rolling Stone magazine, which, among other things, reviews rock records, operates a "People's Record Table." Records received from companies are placed on this table for anyone who wants them. "You can always tell the really bad records," says Ed Ward, assistant editor. "People take it off the table and bring it back the next day."

EXHIBIT Y TO PAPERS IN OPPOSITION TO MOTIONS - SCHEDULE OF DEFENDANT YOTTES' EMPLOYMENT AT WINS

JOHN YOTTES - WRITER

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10/11/7

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	1/15								PL (W D)	EX NO2 ~~2~~ 1		
	1/22									EXAM OF	DJ (10-7	
	1/29										C.S.	
	2/5									OCT 11 1973		

EXHIBIT Y TO PAPERS IN OPPOSITION TO MOTIONS - SCHEDULE OF DEFENDANT YOTTES' EMPLOYMENT AT WINS

RITER	DAT	TURN REG.	TURN IRR.	TURN REG.	TURN IRR.	ILL	VAC.	PER	HOL. PAY	LD/ TP/ SA/	COMP TIME	LUNC
ARCE FORWARD												
372	2/12											
	2/19											
	2/26											
	3/4											
	3/11											
	3/18											
	3/25											
	4/1											
	4/8	16										
58.43	4/15	9		3								
200.46	4/22	18		6	1							
	4/29											
47.03	5/6	4		1								
116.39	5/13	19		5								
39.43	5/20	5		3								
	5/27	4		4								
49.28	6/3	8	3									
156.75	6/10	22		10								
59.43	6/17	5		3								
165.30	6/24	20		12	1							
(79)	7/1	23		9								
195.7	7/8	5		3								
76.95	7/15	14		2								
117.33	7/22	17		7								
78.38	7/29	11		5								
78.38	8/5	11		5								
78.38	8/12	11		5								
117.70	8/19	16		8								
38.00	8/26	5										
195.23	9/2	29		11								
	9/9	11	1	5								
117.33	9/16	17		7								
131.58	9/23	19		5	1							
78.38	9/30	11		5								
116.85	10/7	12		6								
213.29	10/14	23		9					2			
156.28	10/21	23		9								
73.13		11		5								

EXHIBIT Y TO PAPERS IN OPPOSITION TO MOTIONS - SCHEDULE OF DEFENDANT YOTTES' EMPLOYMENT AT WINS

John Yottes (85/8)

Dates	Day Shift TURN REG.	Day Shift TURN IRR.	Night Shift TURN REG.	Night Shift TURN IRR.	ILL	VAC.	PER	HOL. PAY	ACT. ED/ TP/ SA/	COMP TIME	LUNC
BE FORWARD											
72 31.95 11/4	6		1								
28.38 11/11	11		5								
11/18	18	1	6								
44.33 11/25	29		11					16X12			
47.80 12/2	16		8								
12/9											
12/16											
12/23											
12/30											
73 1/6											
1/13											
1/20											
1/27											
39.43 2/3	5		3								
17.33 2/10	17		7								
41.81 2/17	5		3				1				
115.90 2/24	20		4								
3/3											
35.95 3/10	6		2								
82.00 3/17	6 6		3 2								
→ 3/24											
43.00 3/31	2		6								
40.00 4/7	8										
40.00 4/14	8										
4/21											
4/28											
5/5											
82.50 5/12	11		5								
82.50 5/19	11		5								
5/26											
6/2											
6/9											
6/16											
41.00 6/23	6		2								
6/30											
7/7											
7/14											

REPLY AFFIDAVIT OF NICHOLAS A. D'ONOFRIO, ESQ., FOR DEFENDANTS ROBERT MARTIN CORPORATION, WEINBERG AND BERGER, IN SUPPORT OF CROSS MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

(SAME TITLE)

----------x

STATE OF NEW YORK :
:SS.:
COUNTY OF NEW YORK:

NICHOLAS A. D'ONOFRIO, being duly sworn, deposes and says for a reply to the opposition papers submitted by plaintiff as follows:

1. I am an attorney, admitted to practice in this Court, and attorney for the defendants ROBERT MARTIN CORPORATION, ROBERT WEINBERG and MARTIN BERGER, and I am familiar with the proceedings herein.

2. That the voluminous opposition papers submitted on behalf of the plaintiff fails in all respects to disclose to this Court the necessary evidence and proof required by law to raise a question of fact or law necessary to defeat a motion for summary judgment.

3. That your deponent realizes that the granting of the motion can only be made by the Court, after the plaintiff is given the benifit of any questionable evidence which could possibly raise an issue of fact, but in this

case, on the causes of action for conspiracy, libel and violation of certain sections of the Communications Act, the plaintiff has not submitted any direct or circumstantial evidence or proof to sustain the burden necessary to raise an issue of fact on which this motion should be denied.

4. That the affidavits from acquaintances of Ms. Guitar and affidavits from employees in the office of plaintiff's attorney should have no probative value in determining the merits of this case.

5. WHEREFORE, your deponent respectfully prays that the motion for summary judgment on behalf of the defendants ROBERT MARTIN CORPORATION, ROBERT WEINBERG and MARTIN BERGER in all respects be granted as a matter of law, with costs and disbursements, and for such other relief as the Court may determine.

/s/

NICHOLAS A. D'ONOFRIO

Verified November 7, 1974

REPLY AFFIDAVIT OF VINCENT F. CERCHIARA, ESQ., FOR DEFENDANT YOTTES, IN SUPPORT OF MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

(SAME TITLE)

----------x

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.:

VINCENT F. CERCHIARA, being duly sworn, deposes and says:

1. I am an attorney admitted to practice in this Court, and Attorney for Defendant, JOHN YOTTES, and I am familiar with the proceedings herein.

2. That rather than burden this Court further with a repetition of the previous arguments I would merely respectfully call your attention to the Plaintiff's papers in opposition to the instant motion for Summary Judgment which in great length, proceeds to set out the very arguments that have been raised by Defendant JOHN YOTTES herein; namely, that with all the Depositions taken to date and with all the exhaustive investigation and preparation of this law suit by the plaintiff, there is not one shred of evidence to support the conjectures, conslusions and inferences so aptly drawn by Plaintiff.

REPLY AFFIDAVIT OF VINCENT F. CERCHIARA, ESQ., FOR DEFENDANT YOTTES, IN SUPPORT OF MOTION

3. That your deponent is of the opinion that there must be some triable issue of fact in order for this case to proceed to trial and that the burden is on the plaintiff in opposing a motion for summary judgment to show that such triable issues do in fact exist, yet despite all the suppositions and conclusions arrived at by the plaintiff, there is not one piece of factual evidence that would warrant the continuation of this action at the unreasonable expenditure of time by the court and all the parties herein, together with the continuing financial burden necessary to continue the defense of this action.

4. That all the testimony and evidence to date fails to set forth any facts to support that:

a) defendant JOHN YOTTES, took part in any way or manner in a conspiracy against the plaintiff;

b) defendant JOHN YOTTES, in any way was involved in the preparation or publication of the book review of "PROPERTY POWER", by the defendant H. PAUL JEFFERS, or in the distribution of the printed "review" by other defendants herein;

c) the defendant JOHN YOTTES, in any way was involved in any violation of the Communications Act.

5. WHEREFORE, your deponent respectfully prays that the motion for summary judgment dismissing the secondamended

REPLY AFFIDAVIT OF VINCENT F. CERCHIARA, ESQ., FOR DEFENDANT YOTTES, IN SUPPORT OF MOTION

complaint with respect to the defendant JOHN YOTTES be granted as a matter of law, with costs and disbursements and for such other and further relief as this court may deem proper.

VINCENT F. CERCHIARA

Verified November 14, 1974

OPINION, CARTER, D. J.

Copy #42627

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

MARY ANNE GUITAR, :

Plaintiff, :

- against - :

WESTINGHOUSE ELECTRIC CORPORATION, WESTINGHOUSE BROADCASTING CO., INC. (DEL.), H. PAUL JEFFERS, ROBERT MARTIN CORPORATION, ROBERT WEINBERG, MARTIN BERGER, JOHN YOTTES, MARGARET MIGLIORE SCHNEIDER and GERALD DAVID LLOYD, :

Defendants. :

- x

JUNE 26 1975

73 Civ. 161
73 Civ. 5287

A P P E A R A N C E S:

Messrs. Windels & Marx
51 West 51st Street
New York, New York 10019
by Robert P. Knapp, Jr., Esq.
Francis E. Koch, Esq.
J. Dennis McGrath, Esq.
Attorneys for Plaintiff

Messrs. Townley, Updike, Carter & Rodgers
220 East 42nd Street
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by James W. Rodgers, Esq.
John J. Macchia, Esq.
Raymond J. Soffientini, Esq.
Attorneys for Defendants
Westinghouse Electric Corporation
Westinghouse Broadcasting Co., Inc. (Del.)
and H. Paul Jeffers

OPINION, CARTER, D. J.

A P P E A R A N C E S: (Continued)

Nicholas A. D'Onofrio, Esq.
123 William Street
New York, New York 10038
Attorney for Defendants
Robert Martin Corporation
Robert Weinberg
Martin Berger

Messrs. Mitchell, Mina & Madison
127 John Street
New York, New York 10038
by F. V. Mina, Esq.
Attorneys for Defendants
Margaret Miglione Schneider
Gerald David Lloyd

Messrs. Cerchiara & Cerchiara
145 Mount Vernon Avenue
Mount Vernon, New York 10550
by Vincent F. Cerchiara, Esq.
Attorney for Defendant John Yottes

CARTER, District Judge

OPINION, CARTER, D. J.

O P I N I O N

This action was commenced in early 1973 alleging defamation and a conspiracy to violate certain sections of the Communications Act of 1934, as amended. A second action, consolidated with the principal one, contains similar claims.[1] Jurisdiction is asserted under 28 U.S.C. §§1331, 1332.

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[1] The original complaint was filed in January of 1973. An amended complaint adding defendant Yottes was filed in February. A second amended complaint, changing the corporate designation of defendant Westinghouse Broadcasting Co., was filed in June of 1973 and is the subject of the instant action. A second action was initiated against defendant Schneider and Lloyd in late 1973; by order of this court dated April 15, 1974, the two actions were consolidated.

OPINION, CARTER, D. J.

Parties

Plaintiff is a free-lance writer residing in Connecticut. Defendant Westinghouse Broadcasting Co., Inc. (Del.) ("Broadcasting") owns and is the licensee of radio station WINS in New York City. Broadcasting is a wholly-owned subsidiary of Westinghouse Broadcasting Co., Inc. (Ind.), an Indiana corporation which in turn is a wholly-owned subsidiary of defendant Westinghouse Electric Corporation ("Electric"). Defendant H. Paul Jeffers was a full-time news editor employed by WINS. Defendant John Yottes was a "some time casual" employee at WINS prior to December 3, 1972, and subsequent to February 2, 1973. Defendant Robert Martin Corporation is a New York corporation engaged in the construction and development of a real estate project in Westchester known as Tarrygreen. Defendant Martin Berger is its president; defendant Robert Weinberg is its chairman of the board; defendant Gerald David Lloyd (in the second action) is its vice president; and defendant Margaret Migliore Schneider (in the second action) is its employee.

OPINION, CARTER, D. J.

Factual Background

On December 17, 1972, WINS broadcast a review by Jeffers of a book written by plaintiff entitled "Property Power." The review stated:

> "The hope of a lot of city dwellers is to find a place in the suburbs or the country with trees and green grass and clean air. Indeed, that 'better life' has long been part of the so-called American dream. But, as you may have noticed, some suburbanites are not too eager to have city folk moving in. An article in yesterday's Times describes resistance in New England to new home building. This suburban resistance is the subject of a book by Mary Anne Guitar, who is neither a city planner nor an architect, but rather a writer about homes and conservation. Her book is PROPERTY POWER. It amounts to a handbook on how to keep others out. Not just the businesses which have been looking to relocate in the suburbs, but also people. Mary Anne Guitar recommends an amazing arsenal of weapons to keep the suburbs pure -- law suits, the ballot box, tax-payer petitions, and many, many other devices. The battle cry seems to be 'keep the others out.' People become secondary to trees and space ... especially if the people are new comers. PROPERTY POWER denounces progress even if it means decent, livable homes for people. PROPERTY POWER says the rose covered cottage in the country is okay for those who got there first but must be off-limits to those who now would like to breathe some of that fresh country air. The author of PROPERTY POWER lives in Redding, Connecticut and has been busy there keeping HER piece of New England 'clean and green', as it says in her author's biography. Yet Mary Anne Guitar is not a native New Englander. She was born in Missouri. One wonders where she would be living now if someone in Redding had decided to invoke property power in the 1950's when Miss Guitar wanted to move into town. What bothers me about PROPERTY POWER is the seeming hypocrisy of it. On one hand the author writes, 'most of us simply want to live on the land.' Then she proceeds to write a book telling how to keep 'most of us' from doing so.

> Published by Doubleday at $6.95, Mary Anne Guitar's PROPERTY POWER is a blueprint for exclusion ... and, if followed, I'm afraid it's a blueprint for stagnation in the suburbs. I'm H. Paul Jeffers."

Property Power [2] had been published by Doubleday in June of 1972. Prior to the Property Power review Jeffers had broadcast sixty other reviews over WINS, written eight books and produced several records.

On December 15, 1972, Jeffers read an article appearing on the front page of The New York Times entitled "New England Resists Land Development Pressures." According to Jeffers, he decided that a review of plaintiff's book would be "pertinent and timely." Affidavit of Jeffers, ¶3. The review was prepared and recorded on December 16, and broadcast the next day.

On December 13, 1972, a meeting at which plaintiff was a principal speaker was held by the Save Irvington Committee an organization formed for the purpose of expressing and organizing opposition to the rezoning needed for the construction of Tarrygreen. Berger directed that Schneider and Lloyd attend this meeting, takes notes, and report their observations to him.

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[2] The actual title of the book is a subject of dispute. Plaintiff's formulation of the title is Property Power How To Keep The Bulldozer, The Power Line, And The Highwaymen Away From Your Door.

Yottes, who had been hired by Robert Martin Corporation to perform public relations work and services with respect to the development of Tarrygreen, taped a rebroadcast of the Jeffers' review, and gave a transcript of it to either Berger or Weinberg. In order to promote the acceptance of Tarrygreen, Berger reprinted and distributed the review, along with an additional portion entitled "Ms. Guitar quotes," [3] at a public

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[3] The printed reproduction of the broadcast and the additional "Ms. Guitar quotes" portion is as follows:

PROPERTY POWER by Mary Anne Guitar

Review by H. Paul Jeffers, WINS, of "Property Power" by M. A. Guitar
Broadcast, Sunday, December 17, 1972.

"The hope of a lot of city dwellers is to find a place in the suburbs or the country with trees and green grass and clean air. Indeed, that 'better life' has long been part of the so-called American dream. But, as you may have noticed, some suburbanites are not too eager to have city folk moving in. An article in yesterday's Times describes resistance in New England to new home building. This suburban resistance is the subject of a book by Mary Anne Guitar, who is neither a city planner nor an architect, but rather a writer about homes and conservation. Her book is PROPERTY POWER. It amounts to a handbook on how to keep others out. Not just the businesses which have been looking to relocate in the suburbs, but also people. Mary Anne Guitar recommends an amazing arsenal of weapons to keep the suburbs pure -- law suits, the ballot box, tax-payer petitions, and many, many other

(Footnote continued)

hearing on rezoning on December 20, 1972. The "Ms. Guitar quotes" was apparently culled from Property Power, from the notes taken at the December 13 meeting, and from a magazine article which referred to plaintiff and her writings.

(Footnote continued from previous page)

devices. The battle cry seems to be 'keep the others out." People become secondary to trees and space ... especially if the people are newcomers. PROPERTY POWER denounces progress even if it means decent, livable homes for people. PROPERTY POWER says the rose covered cottage in the country is okay for those who got there first but must be off-limits to those who now would like to breathe some of that fresh air. The author of PROPERTY POWER lives in Redding, Connecticut and has been busy there keeping HER piece of New England 'clean and green', as it says in her author's biography. Yet Mary Anne Guitar is not a native New Englander. She was born in Missouri. One wonders where she would be living now if someone in Redding had decided to invoke property power in the 1950's when Miss Guitar wanted to move into town. What bothers me about PROPERTY POWER is the hypocrisy of it. On one hand the author writes, 'most of us simply want to live on the land.' Then she proceeds to write a book telling how to keep 'most of us' from doing so. Published by Doubleday at $6.95, Mary Anne Guitar's PROPERTY POWER is a blueprint for exclusion ... and, if followed, a blueprint for stagnation in the suburbs. I'm H. Paul Jeffers."

Ms. Guitar quotes:

"My role is to make you feel less guilty about wanting to preserve your wooded boundaries and keep all newcomers out at all costs"

"City people should be made to stay in the city"

(Footnote continued)

OPINION, CARTER, D. J.

Contentions of the Parties

In the second amended complaint plaintiff asserts, as a first cause of action, a claim of defamation against the Robert Martin Corporation, Weinberg, Berger and Yottes based on the republication of the Jeffers' review and the "Ms. Guitar quotes" addition; as a second cause of action, a claim of defamation against Electric, Broadcasting, Jeffers and Yottes based on the original broadcast; and, as a third cause of action, a claim of conspiracy by all defendants to violate various sections of the Federal Communications Act. In the second action against Schneider and Lloyd, plaintiff asserts a claim of defamation based on the republication of the review and a claim based on the same conspiracy. The ad damnum clauses in the two actions are identical, demanding two million dollars in compensatory damages and three million dollars in punitive damages, together with costs and disbursements.

(Footnote continued from previous page)

"The City should not be robbed of its livelihood by enticing industry to the suburbs"

"I would be happy to throw sand in the wheels of progress".

OPINION, CARTER, D. J.

All defendants move for summary judgment pursuant to Rule 56, F.R.Civ.P., on the same grounds: (1) as to the defamation claims, that the publications are not libelous on their face, and hence are not actionable as a matter of law; that the publications are critical reviews and comment, protected by the fair comment privilege; or that the publications are protected by a constitutional privilege; (2) as to the conspiracy claims, that no private right of action exists for alleged violations of the Communications Act of 1934.

Discussion

A comparison of the parties' 9(g) statements, submitted in accordance with local rule, reveals, at best, that only immaterial facts are in dispute. Accordingly, the motions for summary judgment are well pleaded. See American Manufacturers Mutual Insurance Co. v. American Broadcasting-Paramount Theatres, Inc., 388 F. 2d 272, 279 (2d Cir. 1967), cert. denied, 404 U.S. 1063 (1972); Empire Electronics Co. v. United States, 311 F. 2d 175, 180 (2d Cir. 1962).

The Defamation Claims

While the law of libel is a limitation on the right of citizenry to speak or write freely, it

"recognizes fair comment as a complete defense to a charge of a libelous publication." Julian v. American Business Consultants, Inc., 2 N.Y. 2d 1, 7, 155 N.Y.S. 2d 1, 7 (1956).[4] When an author submits his work to the public, "he [is] bound to expect, with equal equanimity, praise or blame directed at the work itself." Berg v. Printers' Ink Publishing Co., 54 F. Supp. 795, 797 (S.D.N.Y. 1943), aff'd on opinion below, 141 F. 2d 1022 (2d Cir. 1944). The author invites critism, "and no matter how hostile such criticism may be, the critic enjoys a privilege to make such critical comments as long as the comment does not go beyond the published work itself to attack the author personally," Buckley v. Vidal,

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[4] This is a long-established principle. In Carr v. Hood, 1 Campb. 354, 357 (1808), defendant critically reviewed plaintiff's works and plaintiff claimed defamation. The court found for defendant, holding that the review was directed not at plaintiff personally, but rather at his work:

> "We really must not cramp observations upon authors and their works. They should be liable to criticism, to exposure, and even to ridicule, if their compositions be ridiculous; otherwise the first who writes a book on any subject will maintain a monopoly of sentiment and opinions respecting it. This would tend to perpetuity of error. Show me an attack on the moral character of this plaintiff, or any attack upon his character unconnected with his authorship and I shall be as ready as any judge who ever sat here to protect him, but I cannot hear of malice on account of turning his works into ridicule."

327 F. Supp. 1051, 1052-53 (S.D.N.Y. 1971); Berg, supra; Triggs v. Sun Printing and Publishing Ass'n, 179 N.Y. 144 (1904); the facts are truly stated, Berg, supra; the comment is fair, Buckley, supra; Berg, supra; Triggs, supra; and the comment is an honest expression of the writer's real opinion, Buckley, supra; Briarcliff Lodge Hotel v. Citizen-Sentinel Publishers, Inc., 260 N.Y. 106 (1932).

By publishing Property Power and other articles, and appearing and speaking at public meetings, plaintiff had to expect public attention. The assertion that the review and its subsequent republication with the "Ms. Guitar quotes" addition was an attack on her personally is groundless, "except so far as any criticism of a work of art must necessarily imply a criticism of its author. ... [S]uch necessary implications of comments directed at the work itself are not sufficient to turn otherwise protected criticism into unprotected criticism." Buckley, supra, 327 F. Supp. at 1053. "Such criticism usually implies some criticism of the author; and though his private character is no more subject to attack than another's, the qualities which he has shown by what he has published are open to such analysis and comment as an honest and intelligent man might make." See Berg,

supra, 54 F. Supp. at 797. [5]

The requirement that the facts be truly stated is not applicable to the disputed review, since those portions alleged to be defamatory are not statements of fact. Rather, they can only be characterized as expressions of opinion. [6]

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[5] The phrase "seeming hypocrisy" is a comment referring to the book's content; it is not aimed personally at plaintiff. Compare Corrigan v. Bobbs-Merrill Co., 228 N.Y. 58 (1920); McKee v. Robert, 197 App. Div. 842, 189 N.Y.S. 502 (3d Dep't 1921); Levey v. Brooklyn Union Publishing Co., 65 Misc. 373, 121 N.Y.S. 643 (Sup. Ct. 1909), aff'd, 137 App. Div. 947, 123 N.Y.S. 1126 (1st Dep't 1910), aff'd, 202 N.Y. 555 (1911), where the criticisms were personal attacks on a plaintiff's reputation.

[6] Plaintiff's affidavit claims the following statements in the review are defamatory:

(a) "Her book is Property Power. It amounts to a handbook on how to keep others out."

(b) "The battle cry seems to be 'keep the others out.' People become secondary to trees and space ... especially if the people are newcomers."

(c) "Property Power renounces progress even if it means decent livable homes for people."

(d) "Property Power says the rose covered cottage in the country is okay for those who got there first but must be offlimits to those who now would like to breathe some of that fresh air."

OPINION, CARTER, D. J.

The claim that the full title of the book was intentionally omitted for the purpose of misrepresenting its true nature and content is specious. First, it is not all clear that the phrase "How to Keep the Bulldozer, The Power Line, and the Highwaymen Away From Your Door" is actually part of the title. Property Power is the only title printed on the hardcover, inside page, page following the preface, and side, back and inside cover of the jacket. The "How to" portion is printed on the face of the jacket, and on the title-page, but not in any manner which clearly indicates that it is a part of the title [7]. Second, the cases cited by

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(Footnote continued from previous page)

(e) "What bothers me about Property Power is the seeming hypocrisy of it."

(f) "On one hand the author writes, 'most of us simply want to live on the land.' Then she proceeds to write a book telling how to keep 'most of us' from doing so * * * Mary Anne Guitar's Property Power is a blueprint for exclusion ... and, if followed, I'm afraid it's a blueprint for stagnation in the suburbs."
Affidavit of Guitar, ¶26.

[7] The book jacket reads, transcribed as accurately as possible:

P R O P E R T Y

P O W E R

MARY ANNE GUITAR

(footnote continued)

plaintiff to support the assertion that the publication misrepresented the nature of the book are inapposite; in those cases defamation was found where a publication was falsely stated to have been written by the plaintiff and where the publication itself held plaintiff up to

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(Footnote continued from previous page)

HOW TO KEEP THE BULLDOZER,
THE POWER LINE, AND
THE HIGHWAYMEN
AWAY FROM YOUR DOOR

Preserve property values · Stabilize your taxes · Keep your community clean and green · Set up a land trust, and Save your piece of America

The title page reads:

PROPERTY
POWER

How to Keep
the Bulldozer, the Power Line,
and the Highwaymen
Away from Your Door

MARY ANNE GUITAR

The only indication that the "How to" phrase is a formal part of the title is the way it is printed on the page containing titles of books written by plaintiff. There, a colon sets off the two portions. However, it is unreasonable to assume that any reader would or should look further than the bookcover, jacket or title page to discover the true title.

ridicule and contempt or injured him in his professional reputation. See Ben-Oliel v. Press Publishing Co., 251 N.Y. 250 (1929); D'Altomonte v. New York Herald Co., 154 App. Div. 453, 139 N.Y.S. 200 (1st Dep't), modified without opinion, 208 N.Y. 596 (1913); Clevenger v. Baker Voorhis & Co., 8 N.Y. 2d 187, 203 N.Y.S. 2d 812 (1960); Carroll v. Paramount Pictures, Inc., 3 F.R.D. 95 (S.D.N.Y. 1942).

The "Ms. Guitar quotes" addition[8] presents some difficulty since that phrase does imply that the "quotes" are actual and accurate quotations. However, the "quotes" come substantially from the book, from statements made by plaintiff in public meetings, and

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[8] Plaintiff only attacks these three of the four "quotes" as defamatory:

[a] "My role is to make you feel less guilty about wanting to preserve your wooded boundaries and keep all newcomers out at all costs"

[b] "City people should be made to stay in the city"

[d] "I would be happy to throw sand in the wheels of progress"

Second amended complaint, ¶25.

Plaintiff does assert that the fourth - [c] "The City should not be robbed of its livelihood by enticing industry to the suburbs" - was never expressly stated in those words, but that it does accurately represent her belief and public expressions regarding that matter. Ibid.

from a magazine article referring to plaintiff's writings.[9] Thus the requirement that the facts be "truly stated" is met.

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[9] Martin Berger, who prepared the "quotes", testified during deposition that the source for the [a] and [b] quotes were the notes of the meeting of the Save Irvington Committee on December 13. Those notes, Exhibit L to plaintiff's affidavit, include the following direct quotes of plaintiff:

> "I consider my role to be to do a little consciousness raising to make you all feel less guilty. When you bought you bought more than a house you bought an environment and you are entitled to it. This tract is the last piece of green you have. You must preserve it at all costs. Don't feel guilty--don't let them make you feel guilty."
>
> "You must preserve the greenry. We have to think of yourselves and the next generation ..." "We should keep the plants in the cities. Everybody would be better off. We can be the green belts for the denser areas. Let's not move the city to the country."

Furthermore, the book itself substantiates to a large degree the position attributed to plaintiff that the rural and exurban areas should discourage the influx of new population. See infra.

Berger further testified that the third "quote" -- [c] -- was supported by the book itself, at page 264:

"Is it fair, or even defensible, to rob the city of its livelihood by enticing industry to the suburbs?
"The answer is no."

Berger also testified that the source of the fourth "quote" -- [d] -- is found in a June, 1972, article in Mademoiselle magazine, entitled "An Insider's Guide For the Political Innocent," by plaintiff, on page five:

(Footnote continued)

That the "quotes" are not word-for-word-- indeed they are modified on occasion -- nor always complete, does not make them facts not "truly stated." As the New York Court of Appeals said in Briarcliff Lodge Hotel, supra:

> "And a fair and true report admits of some liberality; the exact words of every proceeding need not be given if the substance be substantially stated. ... Mere exaggeration, slight irony, or wit, or all those delightful touches of style ... do not push beyond the limitations of fair comment. Facts do not cease to be facts because they are mixed with the fair and expectant comment of the story teller, who adds to the recital a little touch by his piquant pen." 260 N.Y. at 118-19. [10]

(Footnote continued from previous page)

"I had been a strong advocate of land preservation, been vocally opposed to 'mindless growth' and left little doubt, that, if elected, I would be happy to throw sand in the wheels of 'progress'." Plaintiff's affidavit, Exhibit M thereto.

[10] Plaintiff's contention that the republication of the book review contains "significant variations" from the original review, Plaintiff's Memorandum at 10, is untenable. The three variations--the omission of "country" from "fresh country air," the omission of "seeming" from "seeming hypocrisy," and the omission of "I'm afraid it's" from "I'm afraid it's a blueprint" -- are not so significant as to require a second "fair comment" analysis of the republication.

As to the essential that the comment be fair, the New York Court of Appeals has stated:

> "The comment must be fair. It must be a reasonable inference from the facts truly stated. ... We have held that even in the absence of admission as to the truth of the facts, it is sufficient if the facts form a reasonable basis for inference and the comment connected with the facts. ... Under the rule of fair comment even if the publication holds one up to public ridicule, contempt and reproach or prejudices one in his opportunity to earn a living, nevertheless it is not actionable if facts form a reasonable basis of inference." Julian, supra, 2 N.Y. 2d at 7-9, 155 N.Y.S. 2d at 7-9.

Courts in this district have clearly indicated, in judging fair comment, that "the latitude allowed the critic in this area is quite large." Buckley, supra, 327 F. Supp. at 1053. In Berg, the court held:

> "The criticism need not express an opinion with which any person of reasonable intelligence and judgment could possibly agree. Unlike a personal attack upon a public man, the fact that the comment or criticism is one which is not reasonably warranted by the facts upon which it is based or is fantastic or extravagant, is immaterial. If the public is to be aided in forming its judgment upon matters of public interest by a free interchange of opinion, it is essential that honest criticism and comment, no matter how foolish or prejudiced, be privileged." 54 F. Supp. at 797.

More recently, the court in Buckley added the gloss "whether [the] comments are so obviously without basis in fact as to be adjudged unfair or dishonest." 327 F. Supp. at 1054. Thus the challenged portions of the review must be measured against the content of the book.

Property Power describes the various tools which can be successfully utilized to keep land developers, utilities, and highways "away from your door"; the door generally being the rural and suburban areas which ring the cities. Essentially it deals with means of preventing or curbing unrestrained growth and development to the detriment of the homeowner, property owner, and community. The evils to be battled include unregulated growth in housing, population and industry. A necessary result of the implementation of land trusts, land use controls and open space programs is the unavailability of land for newcomers; in this sense the book does advocate "keeping others out," and specific passages support Jeffers' comments and opinions [11], though his opinions

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[11] The following passages in plaintiff's book do not unreasonably lend themselves to the interpretation that one of the author's goals is to limit the immigration of "newcomers" into rural and suburban communities:

(Footnote continued) -

need not be any with "which any person of reasonable intelligence and judgment could possibly agree." Berg,

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(Footnote continued from previous page)

"Ever since World War II, the green acres which rim urban centers have been invaded by families seeking elbow room. As they crowd in upon the land the very thing which attracted them, that 'country atmosphere,' begins to disappear." (at 62); "The most recent poll ... demonstrated that Redding valued its 'country atmosphere' and wanted to protect it by buying open land, holding residential zoning at two-acre density, giving preferential tax treatment to owners of large tracts." (at 63); "What about the economic-environmental-social impact of industry? It would surely stimulate population growth as well, with attendant school costs and town services." (at 83); "Giant companies are searching for a spot to locate their suburban/exurban offices and plants. Resort developers are planning vast new vacation complexes. 'New towns' and retirement villages are on the drawing boards. The only problem is finding a place to put them." (at 88); "Overnight they develop a social conscience and wonder piously about the young couples who won't be able to build modest houses if land is zoned for large lots. There is little concern for the people who paid their own hard cash for a place they thought would be decently preserved." (at 92); "Before long your uncrowded, unpolluted paradise will be overwhelmed with three thousand new households." (at 96-97); "The individual who buys a single summer cottage doesn't create severe problems, but multiply him by hundreds and you put a heavy load on sewers and water supply." (at 98); "Every town would like to have an industry assessed at three million dollars, which builds its plant underground and has three employees. But what it gets is a plant with people--people who need to be housed and schooled and transported." (at 105); "If our town's growth had stopped ten years ago, how many of you would be here now? This question

(Footnote continued)

supra, 54 F. Supp. at 797. As a matter of law I find that the review is a reasonable comment on the content of the book, and is fair. [12]

The final element to be considered is whether the comment is an honest expression of the writer's real opinion. Essentially, this raises the issue of malice, which, if found, vitiates the privilege of fair comment. Briarcliff Lodge Hotel, supra; Hoeppner v. Dunkirk Printing Co., 254 N.Y. 95 (1930); Goldwater v. Ginzburg, 261 F. Supp. 784 (S.D.N.Y. 1966), aff'd, 414 F. 2d 324 (2d Cir. 1969), cert. denied, 396 U.S. 1049 (1970).

(Footnote continued from previous page)

was asked at a town meeting called to hear the proposal of a big-time developer. Some of those within earshot might have felt a twinge of guilt at having slipped in while the door was open. But most of the audience was probably thinking, 'Thank God, I'm here. I had the good sense to move in. And I'm going to make sure that what I worked for and saved for and slaved over isn't going to disappear.' Selfish? So is any investor ... . So why is the biggest investment a family is likely to make in its whole lifetime--its house and property--not worth defending?" (At 259-60).

[12] The "Ms. Guitar quotes" addition is similarly fair comment. See n.9 supra.

OPINION, CARTER, D. J.

Contrary to plaintiff's allegation of malice, a careful reading of the affidavits, depositions and exhibits filed here show that plaintiff has not raised a disputed genuine issue of material fact as to malice. In opposing a motion for summary judgment, plaintiff has the burden of producing specific facts, admissible in evidence, which show that there is a genuine issue for trial. [13]

Though complete and exhaustive depositions have been taken, plaintiff has not satisfied that burden. Instead, plaintiff has come forward with only unsupported speculation, opinion and surmise--none of which is sufficient to defeat a well grounded motion for summary judgment. Daily Press, Inc. v. United Press International,

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[13] Rule 56(e) provides:

"(e) Form of Affidavits; Further Testimony; Defense Required.
Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him." Rule 56(e), F.R.Civ.P.

412 F. 2d 126, 134 (6th Cir.), cert. denied, 396 U.S. 990 (1969); Wilson Jones Co. v. Gilbert & Bennett Manufacturing Co., 332 F. 2d 216, 219 (2d Cir. 1964); Meeropol v. Nizer, 381 F. Supp. 29, 32, 35 (S.D.N.Y. 1974); Koningsberg v. Time, Inc., 312 F. Supp. 848, 853-54 (S.D.N.Y. 1970); Flintkote Co. v. United States, 47 F.R.D. 322, 324 (S.D.N.Y. 1969), cert. denied, 402 U.S. 944 (1971). Some of the more egregious assertions in plaintiff's affidavit include the following: that Jeffers is not a bona fide book reviewer because he buys his books rather than receiving them free from publishers, Guitar affidavit, ¶¶37, 38; that Jeffers was promoting books for publishers, rather than being a legitimate reviewer, because only eight of sixty-five books reviewed were on best-seller lists and because he utilized taped material which "had to have come from the publishers," Id. ¶¶39-41; that Jeffers did not review books on their merits because only one other book, in addition to Property Power, was published by Doubleday, while three other reviews in a one-month period concerned books of a smaller publisher, Id. ¶42; that if Jeffers would take "payola" to promote books, he would take "payola" to hurt plaintiff, Id. ¶41; and that the Jeffers' review was initiated by one of the Robert Martin defendants, though whether "Jeffers was paid for his fake

'book review' or whether he did it as a favor for Yottes, I do not and cannot know." Id. ¶46. [14]

Defendants are entitled to summary judgment where the alleged defamation constitutes fair comment and plaintiff fails to set forth evidentiary facts,

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[14] Other affidavits submitted in opposition to the motion are similarly infirm. The Applebaum affidavit is based on hearsay and opinion, and is conclusory and argumentative. The Harris and Delph affidavits, purporting to show the general practice in the publishing field of distributing new books free to reviewers, is irrelevant. The Kanefsky and Winnick affidavits, prepared by para-legal assistants in plaintiff's counsel's law firm, contain transcripts of more than sixty book reviews broadcast by Jeffers, publication dates of the books reviewed, and the ostensible impetus for each review; they are asserted to show both a purported untimeliness of the Property Power review and the general absence of "personal attacks" on the authors. As discussed supra, the Property Power review was not a personal attack on the author; the assertion that the review was untimely is contradicted by the specific impetus of the review--the Time's article--and is supported only by an artificial determination that only books reviewed within six months of their publishing date are "new."

which would warrant a trial, to support the allegations that defendants were motivated by malice. Cole Fisher Rogow, Inc. v. Carl Alley, Inc., 25 N.Y. 2d 943, 945, 305 N.Y.S. 2d 154, 155 (1969). Summary judgment is not defeated by charges based upon surmise, conjecture and suspicion, Shapiro v. Health Insurance Plan of Greater New York, 7 N.Y. 2d 56, 62, 194 N.Y.S. 2d 509, 515 (1959); Trails West, Inc. v. Wolff, 32 N.Y. 2d 207, 221, 344 N.Y.S. 2d 863, 873-74 (1973); particularly where there has been full opportunity for discovery, Stillman v. Stillman, 22 N.Y. 2d 48, 54, 290 N.Y.S. 2d 893, 898 (1968); see also Modern Home Institute, Inc. v. Hartford Accident and Indemnity Co., No. 74-1965 (2d Cir., March 11, 1975).

The "rule" that summary judgment should be reluctantly granted where state of mind is at issue should not dissuade the court from its duty to grant such relief where no material fact issue exists [15], see, e.g., Washington Post Co. v. Keogh, 365 F. 2d 965, 967-68 (D.C. Cir. 1966), cert. denied, 385 U.S. 1011 (1967);

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[15] Plaintiff's 9(g) statement in opposition is replete with conclusory allegations lifted from the second amended complaint, legal conclusions properly determinable by the court, and recitals from certain of defendants' defenses. The 9(g) statement is also violative of Rule 56(e). Flintkote Co. v. United States, 47 F.R.D. 322, 324 (S.D.N.Y. 1969), cert. denied, 402 U.S. 944 (1971).

the question of malice is for the jury only when evidence exists warranting that issue's submission to that body, Shapiro, supra, 7 N.Y. 2d at 60, 194 N.Y.S. 2d at 513; Buckley, supra, 327 F. Supp. at 1054. The mere hope of putting defendants' witnesses' credibility in issue at trial is not enough to withstand a motion for summary judgment. Koningsberg, supra, 312 F. Supp. at 853; Hurley v. Northwest Publications, Inc., 273 F. Supp. 967, 974 (D. Minn. 1967), aff'd on opinion below, 398 F. 2d 346 (8th Cir. 1968); Trails West, supra, 32 N.Y. 2d at 221, 344 N.Y.S. 2d at 873; Buckley, supra, 327 F. Supp. at 1055. Moreover, because of the importance of free speech, summary judgment is the "rule," and not the exception, in defamation cases. [16]

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[16] See, e.g., Perry v. Columbia Broadcasting System, Inc., 499 F. 2d 797 (7th Cir.), cert. denied, _____ U.S. _____, 95 S. Ct. 150 (1974); Cervantes v. Time, Inc., 464 F. 2d 986 (8th Cir. 1972), cert. denied, 409 U.S. 1125 (1973); Miller v. News Syndicate Co., 445 F. 2d 356 (2d Cir. 1971); Bon Air Hotel, Inc. v. Time, Inc., 426 F. 2d 858 (5th Cir. 1970); Time, Inc. v. McLaney, 406 F. 2d 565 (5th Cir), cert. denied, 395 U.S. 922 (1969); Thompson v. Evening Star Newspaper Co., 394 F. 2d 774 (D. C. Cir.), cert. denied, 393 U.S. 884 (1968); Washington Post Co. v. Keogh, 365 F. 2d 965 (D.C. Cir. 1966), cert. denied, 385 U.S. 1011 (1967); Meeropol v. Nizer, 381 F. Supp. 29, 32 (S.D.N.Y. 1974).

The two cases proffered by plaintiff as support for the inappropriateness of summary judgment are inapplicable here. In both Goldwater, supra, and Guam Federation of Teachers v. Ysrael, 492 F. 2d 438 (9th Cir. 1974), e courts took care to note that ordinarily the grant of summary judgment in defamation cases is necessary to protect First Amendment rights, 414 F. 2d at 337 n.21; 492 F. 2d at 441. In Goldwater, the Second Circuit emphasized the proof from which a jury could infer malice, 414 F. 2d at 336-37; in Guam, the Ninth Circuit reversed a directed verdict for defendant, finding that the lower court erred in passing on the credibility of witnesses and for choosing among competing legitimate inferences, 492 F. 2d at 441. Here, no proof has been presented from which a jury could infer malice; nor are there any competing legitimate inferences that could properly be drawn in plaintiff's favor.

Whether proof of actual malice exists is an issue for the court to decide on a motion for summary judgment; a showing of malice may not be presumed but must be proved. Fram v. Yellow Cab Co., 380 F. Supp. 1314, 1335 (W.D. Pa. 1974). Plaintiff has not satisfied

this burden; accordingly summary judgment as to the defamation claims is granted to all defendants. [17]

Constitutional considerations mandate the same result. It seems clear that Ms. Guitar is a "public figure" within the meaning of Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974):

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[17] Plaintiff suggests that Buckley v. Littell, 70 Civ. 2844 (S.D.N.Y., May 23, 1975) requires denial of summary judgment. In that case the court found that passages in defendant's book which referred to plaintiff as a fascist or fascist fellow-traveler were libelous per se, and that in addition defendant failed to establish the fair comment defense. That decision is inapplicable here, since defendants have successfully interposed that defense. Whether the review and republication were defamatory is merely an academic exercise, since fair comment constitutes a complete defense to defamation. Julian v. American Business Consultants, Inc., 2 N.Y. 2d 1, 155 N.Y.S. 2d 1 (1956); Cole Fisher Rogow, Inc. v. Carl Alley, Inc., 25 N.Y. 2d 943, 305 N.Y.S. 2d 1[illegible] (1969).

> "For the most part those who attain this status have assumed roles of especial prominance in the affairs of society. ... More commonly, those classed as public figures have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved. ... [T]hey invite attention and comment." Id. at 345.

Plaintiff would thus have to prove with convincing clarity that the alleged libelous review and republication were made with "malice," that is, with knowledge of their falsity or with reckless disregard for the truth or falsity of the review and republication. Id. at 342. Since plaintiff has presented no evidence giving rise to an issue of fact as to whether malice actually existed, summary judgment as to the defamation counts is granted on First Amendment grounds as well. See, e.g., Thompson v. Evening Star Newspaper Co., 394 F. 2d 774, 776 (D.C. Cir.), cert. denied, 393 U.S. 884 (1968); Hurley, supra, 273 F. Supp. at 974; Koningsberg, supra, 312 F. Supp. at 853; Trails West, supra, 31 N.Y. 2d at 221, 344 N.Y.S. 2d at 873.

OPINION, CARTER, D. J.

Conspiracy to Violate the Communications Act

The third cause of action is premised on a purported conspiracy to violate 47 U.S.C. §§317, 501, 502, 503, and 508 of the Federal Communications Act of 1934, as amended. [18] The basis for motions in

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[18] Section 317 provides:

Announcement of payment for broadcast--Disclosure of person furnishing

"(a) (1) All matter broadcast by any radio station for which any money, service or other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person: Provided, That "service or other valuable consideration" shall not include any service or property furnished without charge or at a nominal charge for use on, or in connection with, a broadcast unless it is so furnished in consideration for an identification in a broadcast of any person, product, service, trademark, or brand name beyond an identification which is reasonably related to the use of such service or property on the broadcast.

"(2) Nothing in this section shall preclude the Commission from requiring that an appropriate announcement shall be made at the time of the broadcast in the case of any political program or any program involving the discussion of any controversial issue for which any films, records, transcriptions, talent, scripts, or other material or service of any kind have been furnished, without charge or at a nominal charge, directly or indirectly, as an inducement to the broadcast of such program.

(Footnote continued)

respect of this claim is that no private right of action exists for alleged violations of the Act. For reasons stated herein, the motions for summary judgment are granted.

(Footnote continued from previous page)

Disclosure to station of payments

"(b) In any case where a report has been made to a radio station, as required by section 508 of this title, of circumstances which would have required an announcement under this section had the consideration been received by such radio station, an appropriate announcement shall be made by such radio station.

Acquiring information from station employees

"(c) The licensee of each radio station shall exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals directly in connection with any program or program matter for broadcast, information to enable such licensee to make the announcement required by this section.

Waiver of announcement

"(d) The Commission may waive the requirement of an announcement as provided in this section in any case or class of cases with respect to which it determines that the public interest, convenience, or necessity does not require the broadcasting of such announcement.

Rules and regulations

"(e) The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section." 47 U.S.C. §317.

(Footnote continued)

OPINION, CARTER, D. J.

The sections of the Act concern certain disclosure and announcement requirements which a radio station has to make when payments are received for

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Section 501 provides:

General Penalty

"Any person who willfully and knowingly does or causes or suffers to be done any act, matter, or thing, in this chapter prohibited or declared to be unlawful, or who willfully and knowingly omits or fails to do any act, matter, or thing in this chapter required to be done, or willfully and knowingly causes or suffers such omission or failure, shall, upon conviction thereof, be punished for such offense, for which no penalty (other than a forfeiture) is provided in this chapter, by a fine of not more than $10,000 or by imprisonment for a term not exceeding one year, or both; except that any person, having been once convicted of an offense punishable under this section, who is subsequently convicted of violating any provison of this chapter punishable under this section, shall be punished by a fine of not more than $10,000 or by imprisonment for a term not exceeding two years or both." 47 U.S.C. §501

Section 502 provides:

Violation of rules, regulations, etc.

"Any person who willfully and knowingly violates any rule, regulation, restriction, or condition made or imposed by the Commission under authority of this chapter, or any rule, regulation, restriction, or condition made or imposed by any international radio or wire communications treaty or convention, or regulations annexed thereto, to which the United States is or may hereafter become a party, shall, in addition to any other penalties provided by law, be punished, upon conviction thereof, by a fine of not more than $500 for each and every day during which such offense occurs." 47 U.S.C.§502

the broadcast of any matter over the station; penalty and forfeiture provisions, enforceable by the government and the F.C.C., are provided for violations of

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(Footnote continued from previous page)

Section 503 provides:

Forfeitures--Rebates and offsets

"(a) Any person who shall deliver messages for interstate or foreign transmission to any carrier, or for whom as sender or receiver, any such carrier shall transmit any interstate or foreign wire or radio communication, who shall knowingly by employee, agent, officer, or otherwise, directly or indirectly, by or through any means or device whatsoever, receive or accept from such common carrier any sum of money or any other valuable consideration as a rebate or offset against the regular charges for transmission of such messages as fixed by the schedules of charges provided for in this chapter, shall in addition to any other penalty provided by this chapter forfeit to the United States a sum of money three times the amount of money so received or accepted and three times the value of any other consideration so received or accepted, to be ascertained by the trial court; and in the trial of said action all such rebates or other considerations so received or accepted for a period of six years prior to the commencement of the action, may be included therein, and the amount recovered shall be three times the total amount of money, or three times the total value of such consideration, so received or accepted, or both, as the case may be.

Violation of rules, regulations, etc.; notice of apparent liability; limitation of forfeiture liability

"(b) (1) Any licensee or permittee of a broadcast station who--

the Act. However, the Act provides no statutory basis for a private right of action; it was enacted for the benefit of the public interest in communications and

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(Footnote continued from previous page)

(A) willfully or repeatedly fails to operate such station substantially as set forth in his license or permit,

(B) willfully or repeatedly fails to observe any of the provisions of this chapter or of any rule or regulation of the Commission prescribed under authority of this chapter or under authority of any treaty ratified by the United States,

(C) fails to observe any final cease and desist order issued by the Commission,

(D) violates section 317(c) or section 509(a)(4) of this title, or

(E) violates section 1304, 1343, or 1464 of Title 18, shall forfeit to the United States a sum not to exceed $1,000. Each day during which such violation occurs shall constitute a separate offense. Such forfeiture shall be in addition to any other penalty provided by this chapter.

"(2) No forfeiture liability under paragraph (1) of this subsection (b) shall attach unless a written notice of apparent liability shall have been issued by the Commission and such notice has been received by the licensee or permittee or the Commission shall have sent such notice by registered or certified mail to the last known address of the licensee or permittee. A licensee or permittee so notified shall be granted an opportunity to show in writing, within such reasonable period as the Commission shall by regulations prescribe, why he should not be held liable. A notice issued under this paragraph shall not be valid unless it sets forth the date, facts, and nature of the act or omission with which the

did not fashion new private rights. Scripps-Howard Radio, Inc. v. F.C.C., 316 U.S. 4, 14 (1942).

(Footnote continued from previous page)

licensee or permittee is charged and specifically identifies the particular provision or provisions of the law, rule, or regulation or the license, permit, or cease and desist order involved.

"(3) No forfeiture liability under paragraph (1) of this subsection (b) shall attach for any violation occurring more than one year prior to the date of issuance of the notice of apparent liability and in no event shall the forfeiture imposed for the acts or omissions set forth in any notice of apparent liability exceed $10,000." 47 U.S.C. §503.

Section 508 provides:

Disclosure of payments to individuals connected with broadcasts--Payments to station employees

"(a) Subject to subsection (d) of this section, any employee of a radio station who accepts or agrees to accept from any person (other than such station), or any person (other than such station) who pays or agrees to pay such employee, any money, service or other valuable consideration for the broadcast of any matter over such station shall, in advance of such broadcast, disclose the fact of such acceptance or agreement to such station.

Production or preparation of programs

"(b) Subject to subsection (d) of this section, any person who, in connection with the production or preparation of any program or program matter which is intended for broadcasting over any radio station, accepts or agrees to accept, or pays or agrees to pay, any money, service or other valuable consideration for the inclusion of any matter as a part of such program or program matter, shall, in

The Act did not create, even by implication, a cause of action cognizable in the district courts,

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(Footnote continued from previous page)

advance of such broadcast, disclose the fact of such acceptance or payment or agreement to the payee's employer, or to the person for whom such program or program matter is being produced, or to the licensee of such station over which such program is broadcast.

Supplying of program or program matter

"(c) Subject to subsection (d) of this section, any person who supplies to any other person any program or program matter which is intended for broadcasting over any radio station shall, in advance of such broadcast, disclose to such other person any information of which he has knowledge, or which has been disclosed to him, as to any money, service or other valuable consideration which any person has paid or accepted, or has agreed to pay or accept, for the inclusion of any matter as a part of such program or program matter.

Waiver of announcements under section 317(d)

"(d) The provisions of this section requiring the disclosure of information shall not apply in any case where, because of a waiver made by the Commission under section 317(d) of this title, an announcement is not required to be made under section 317 of this title.

Announcement under section 317 as sufficient disclosure

"(e) The inclusion in the program of the announcement required by section 317 of this title shall constitute the disclosure required by this section.

Daly v. West Central Broadcasting Co., 201 F. Supp. 238, 240-41 (S.D. Ill.), aff'd sub nom., Daly v. Columbia Broadcasting System, Inc., 309 F. 2d 83 (7th Cir. 1962), the court's sole function being the review of final orders of the F.C.C., Ackerman v. Columbia Broadcasting System, Inc., 301 F. Supp. 628, 631 (S.D.N.Y. 1969), after the plaintiff has invoked the primary and exclusive jurisdiction of that commission, Gordan v. National Broadcasting Co., 287 F. Supp. 452, 455 (S.D.N.Y. 1968). The district courts have entertained original jurisdiction in actions brought by the government to exact a forfeiture

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Definition of "service or other valuable consideration"

"(f) The term "service or other valuable consideration" as used in this section shall not include any service or property furnished without charge or at a nominal charge for use on, or in connection with a broadcast, or for use on a program which is intended for broadcasting over any radio station, unless it is so furnished in consideration for an identification in such broadcast or in such program of any person, product, service, trademark, or brand name beyond an identification which is reasonably related to the use of such service or property in such broadcast or such program.

Penalties

"(g) Any person who violates any provision of this section shall, for each such violation, be fined not more than $10,000 or imprisoned not more than one year, or both." 47 U.S.C. §503.

or penalty, see, e.g., United States v. Vega, 447 F. 2d 698 (2d Cir. 1971), cert. denied, 404 U.S. 1038 (1972); United States v. Midwest Radio-Television, Inc., 249 F. Supp. 936 (D. Minn. 1966); United States v. WHAS, Inc., 253 F. Supp. 603 (W.D. Ky . 1966), aff'd, 385 F. 2d 784 (6th Cir. 1967), but have not done so in private suits, see Daly, supra, 309 F. 2d at 85-86; Gordon, supra, 287 F. Supp. at 455; Ackerman, supra, 301 F. Supp. at 631-32.

The contention that a private civil cause of action arises under these sections by implication is meritless, since the statute, legislative history and relevant cases refute any claim that Congress intended to protect a "specific class," as opposed to protection for the public generally. See H.R. Rep. No. 2148, 86th Cong. 2d Sess. Appendix C, 2 United States Code Congressional and Administrative News at 3541 (1960); Scripps-Howard, supra; Ackerman, supra; Gordan, supra; Daly, supra; Communist Party v. SACB, 223 F. 2d 531, 556 (D.C. Cir. 1954), rev'd on other grounds, 351 U.S. 115 (1956); Noerr Motor Freight, Inc. v. Eastern Railroad Presidents Conference, 155 F. Supp. 768, 828 (E. Pa. 1957), aff'd, 273 F. 2d 218 (3d Cir. 1959), rev'd on other grounds, 365 U.S. 127 (1961); cf. Reitmeister v. Reitmeister, 162 F. 2d 691 (2d Cir. 1947).

OPINION, CARTER, D. J.

Defendants are granted summary judgment dismissing the second amended complaint, with costs and disbursements of this action.

SO ORDERED.

Dated: New York, New York
June 17, 1975

Robert L. Carter

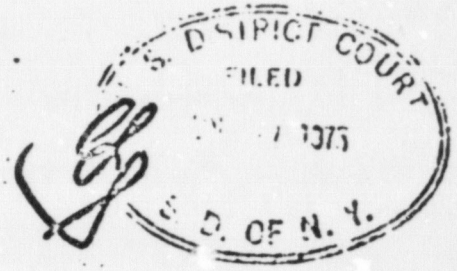
ROBERT L. CARTER
U.S.D.J.

JUDGMENT APPEALED FROM

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

(SAME TITLE)

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Defendants having moved the Court for summary judgment, pursuant to Rule 56, of the Federal Rules of Civil Procedure, and the said motion having come on to be heard before the Honorable Robert L. Carter, United States District Judge, and the Court thereafter on June 19, 1975, having handed down its opinion granting the said motion, it is,

ORDERED, ADJUDGED and DECREED: That defendants WESTINGHOUSE ELECTRIC CORPORATION, WESTINGHOUSE BROADCASTING CO., INC. (DEL.), H. PAUL JEFFERS, ROBERT MARTIN CORPORATION, ROBERT WEINBERG, MARTIN BERGER, JOHN YOTTES, MARGARET MIGLIORE SCHNEIDER and GERALD DAVID LLOYD, have judgment against plaintiff MARY ANNE GUITAR, dismissing the action, with costs to be taxed.

Dated: New York, N.Y.
June 30, 1975

Raymond F. Burghardt
Clerk

7/17/75- The appearance in opposition Bill of Costs as taxed in favor of defendants Westinghouse Electric; Westinghouse Broadcasting and Jeffers, in the sum of $ 896.72 and added to the judgment as Judgt #...

Raymond F. Burghardt
CLERK

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

(SAME TITLE)

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Notice is hereby given that plaintiff, Mary Anne Guitar, hereby appeals to the United States Court of Appeals for the Second Circuit from the Order of this Court (Carter, J.) dated June 17, 1975, and entered on June 19, 1975 granting defendants summary judgment dismissing the Second Amended Complaint with costs and disbursements.

Dated: New York, New York
July 15, 1975.

WINDELS & MARX

By /s/ Robert P. Knapp, Jr.
A Member of the Firm
Attorneys for Plaintiff
Mary Anne Guitar
Office and P. O. Address:
91 West 51st Street
New York, N. Y. 10019
(212) 977-9500

NOTICE OF APPEAL

TO: Townley, Updike, Carter & Rodgers, Esqs.
220 East 42nd Street
New York, New York 10017
Attorneys for Defendants
Westinghouse Electric Corporation,
Westinghouse Broadcasting Co., Inc. (Del.)
and H. Paul Jeffers

Nicholas A. D'Onofrio, Esq.
123 William Street
New York, New York 10038
Attorney for Defendants
Robert Martin Corporation,
Robert Weinberg and
Martin Berger

F. V. Mina, Esq.
217 Broadway
New York, New York 10007
Attorney for Defendants
Margaret Migliore Schneider and
Gerald David Lloyd

Cerchiara & Cerchiara, Esqs.
145 Mount Vernon Avenue
Mount Vernon, New York 10550
Attorneys for Defendant
John Yottes

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

VINCENT PANZA, being duly sworn, deposes and says that deponent is not a party to the action, is over 18 years of age and resides at 2002 ELLIS AVE BRONX, N.Y.

That on the 20th day of OCTOBER, 1975, deponent personally served the within JOINT APPENDIX upon the attorneys designated below who represent the indicated parties in this action and at the addresses below stated which are those that have been designated by said attorneys for that purpose.

By leaving 1 true copies of same with a duly authorized person at their designated office.

~~By depositing~~ _____ true copies of same enclosed in a postpaid properly addressed wrapper, in the post office or official depository under the exclusive care and custody of the United Stated post office department within the State of New York.

Names af attorneys served, together with the names of the clients represented and the attorneys' designated addresses.

1. TOWNLEY UPDIKE CARTER & RODGERS
ATTORNEYS FOR DEFENDANTS APPELLEES WESTINGHOUSE ELECTRIC, WESTINGHOUSE BROADCASTING & H. PAUL JEFFERS
220 EAST 42ND ST. NEW YORK, N.Y. 10017

2. WILLIAM F. LARKIN, ESQ.
ATTORNEY FOR DEFENDANTS APPELLEES ROBERT MARTIN CORP.
WEINBERG & BERGER
11 PARK PLACE NEW YORK, N.Y. 10007

3. F.V. MINA, ESQ.
ATTORNEY FOR DEFENDANTS APPELLEES
SCHNEIDER & LLOYD
217 BROADWAY, NEW YORK, N.Y. 10007

Vincent Panza

Sworn to before me this
20th day of October, 1975

Michael DeSantis

MICHAEL DeSANTIS
Notary Public, State of New York
No. 03-0930908
Qualified in Bronx County
Commission Expires March 30, 1976

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

JOSE PEREZ, being duly sworn, deposes and says that deponent is not a party to the action, is over 18 years of age and resides at 61-49 DRY HARBOR RD. MIDDLE VILLAGE, N.Y.

That on the 20th day of OCTOBER, 1975, deponent personally served the within JOINT APPENDIX upon the attorneys designated below who represent the indicated parties in this action and at the addresses below stated which are those that have been designated by said attorneys for that purpose.

By leaving 1 true copies of same with a duly authorized person at their designated office.

~~By depositing ____ true copies of same enclosed in a postpaid properly addressed wrapper, in the post office or official depository under the exclusive care and custody of the United Stated post office department within the State of New York.~~

Names af attorneys served, together with the names of the clients represented and the attorneys' designated addresses.

CERCHIARA & CERCHIARA
ATTORNEY FOR DEFENDANT APPELLEE YOTTES
145 MOUNT VERNON AVE
MOUNT VERNON, N.Y. 10550

JMP

Sworn to before me this
20 day of October, 1975

Michael DeSantis

MICHAEL DeSANTIS
Notary Public, State of New York
No. 03-0930908
Qualified in Bronx County
Commission Expires March 30, 1976